

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908

No. 1106

E. S. EVANS, ET AL., PETITIONERS,

*vs.*

CHARLES E. NEWTON, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF GEORGIA

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GENERAL SERVICES ADMINISTRATION  
National Archives and Records Service



To all to whom these presents shall come, Greeting:

I Certify That the attached copy, or each of the specified number of  
attached copies, of the document(s) identified below is a true copy of a document  
in the legal custody of the Administrator of General Services and deposited  
in the National Archives of the United States.

Records of the Works Projects Administration, RG 69, selected  
pages from Project Folders OP 65-34-1077 through 1096  
(some pages unavoidably illegible).

I, ROBERT H. BAHMER, Archivist of the United States,

being duly authorized (41 CFR 101-7.106-3), have  
hereunto caused the Seal of the National Archives  
to be affixed and my name subscribed by the  
Chief, Central Reference Staff

of the National Archives, in the District of Columbia,

this 23rd day of June 19 67.

Robert H. Bahmer

Archivist of the United States

By

Richard A. Smith

[598]

FD-25

12534

THIRD PROJECT ADMINISTRATION OF GEORGIA

369

SPONSOR'S FINANCIAL AGREEMENT

348

Project Covered in Application.

Sponsor's Application No. \_\_\_\_\_ State Serial No. 31Federal Serial No. \_\_\_\_\_ Official (Adm.) Project No. CS-34-1077Work Project No. 264City of Macon City Macon County BibbOptions: Expenditures City Funds  
(Use Presidential Letter Description for Approved Projects)

CONSIDERATION OF EXPENDITURES TO BE MADE FROM FEDERAL FUNDS ON THE PROPOSAL  
 STATED HEREIN IS, THE UNDERSIGNED LEGALLY AUTHORIZED REPRESENTATIVES OF THE  
 CITY, DO HEREBY AGREE THAT HE WILL FINANCE SUCH PART OF THE ENTIRE COST THEREOF  
 AS IS NOT TO BE SUPPLIED FROM FEDERAL FUNDS.

Local Officer: Alb. Evans Title Mayor Date 7/25/37

Sponsor's Agent: W. H. Smith Title Mayor Date 7/25/37

12595

349

5370

WORK PROJECTS ADMINISTRATION  
OF GEORGIA(Use this form only for Official Projects)  
(approved for local operation)CERTIFICATE OF LIQUIDITY IN PROJECT BALANCE AVAILABLE  
FOR RESECTIONTO: STATE OFFICE Division of Operations & (Check)  
Division of Women's WorkW.P. AREA NO. 2 COUNTY RichO.P. OR A.P. NO. 23-34-1077 W.P. NO. 244Presidential or  
Administrative  
Letter Numbers21REGIONAL OFFICE  
NOTIFIED  
JUL 7 1939

Limitation

\$ 100,000.00\$\$ 100,000.00ACTUAL EXPENDITURES AS OF 19

ACTUAL MEN HOURS

FEDERAL SPONSOR

469079469079469079

ACTUAL EXPENDITURES

FEDERAL SPONSOR TOTAL

11963629 426807 1239043739606 1415501 145511712022225 1292243 13794468

- (1) Presidential Limitation including all supplements  
(exclusive of 10% authorized increase).
- (2) Total W.P.L. Expenditures
- (3) Unencumbered balance of W.P.L. Limitation  
available for resection (1 minus 2)

\$ 109,530.00\$ 1,000,000.00\$ 1,508.95

This certifies that the statement above represents the true financial condition of the above identified project as of the date shown and that the unencumbered balance shown is available for resection, and that no unliquidated encumbrances are outstanding against the project. It is certified that total expenditures of federal funds are within the authorized limitation for the project. It is also certified that Federal expenditures for labor represent not less than 25% of total Federal expenditures on the project. This further certifies that no additional encumbrances will be accepted which will alter the total Federal expenditures on the project.

W. J. L.

19

Signed

State Director of Finance  
Work Projects Administration

16051

Supreme No. 100-1-1940

12597

**Data** \_\_\_\_\_

P.L. 24

WORKS PROGRESS ADMINISTRATION A revised estimate of a work

**STATEMENT OF PROJECT ESTIMATE DETAIL** *Project previously operated.*

Mr. J. L. MacDougall

Atlanta, Ga.

**1990** *Journal of the American Medical Association* 264:1033-1036

**Editorial Board**

It is desired that V - work project described below be placed in operation.  
Approval of its prosecution is requested.

**A. L. KENNEDY**

Dist. 43 - Marion, Ga.

**Indicated Item added:**

16

11b - Macomb

Location serial 34-11

State of project: \_\_\_\_\_

Location of project:

## Landscaping City Park

This project approved under AFR. 085027

6-12-88

Estimated date of completion 6-30-58

City of London

**Keywords:** *depression, mood, mood disorder, mood disorder with anxiety, mood disorder without anxiety, mood disorder with anxiety, mood disorder without anxiety, mood disorder with anxiety, mood disorder without anxiety*

10% = ... 10EC8.38

Q. P. Mullins, 22524.00

Total \$120032.28

Included in this Evaluation are work products Nos. \_\_\_\_\_ 344

Check serial for estimate bearing Reference No. 6926

1944

Figures and amounts comprise the cost estimate hereby approved, of the above-mentioned project or projects.

Line	MAN-GLASS		BOTTLEWORK OF PYRUS		Total PYRUS
	WPA	Revenue	WPA	Revenue	
LABOR	442072	7536	119036.29	3793.63	122829.92
SUPPL.					
TOTAL LABOR	442072	7536	119036.29	3793.63	122829.92
INSURANCE			334.68	14755.11	14889.79
TOTAL LABOR (including Supply Fund reserve)					
TOTAL LABOR AND INSURANCE (including Supply Fund reserve)			120370.97	17228.72	137599.69
Fund reserve and monthly limitation				X X X X X	
TOTAL INSURANCE (including Supply Fund reserve)			334.68	14755.11	14889.79
TOTAL APPROVED COST ESTIMATES			120705.65	17243.83	137949.48

Identifying symbols shall appear on every pay roll, requisition, or other procurement document chargeable to the fund.

10-330

OSMAI 100-1000 No. 65-34-1077

Test number No. 344

465803

00—Emergency Relief, Works Program Administration  
(Non-Federal) Projects Approval, Science and

Non-Financial Projects Approval Form

~~CONFIDENTIAL~~

Approved: 1. H.L. MHCWILLIAMS

100-114989-7

4/21/1964

U.S. Department of Agriculture

DATE DIRECTOR

\_\_\_\_\_

**COPY BOUND CLOSE IN CENTER**





352

CLASS \_\_\_\_\_  
**WORKS PROGRESS ADMINISTRATION**  
**PROJECT APPLICATION**  
 5389  
 DISTRICT NO. 112724 STATE WPA APPLICATION NO. 21  
 APPROVED BY STATE D. Way B. Shepsone OF GEORGIA  
 DATE 8/19/35 (STATE ADMINISTRATOR) (STATE)

WORKS PROGRESS ADMINISTRATION OF GA (DISTRICT) Georgia (STATE)  
 ANALYSIS HAS BEEN MADE OF SPONSOR'S PROPOSAL NO. \_\_\_\_\_ SUBMITTED BY:

OF MOORE (CITY, TOWN, VILLAGE) MOORE (COUNTY)  
 (SPONSOR)

IN ELUCIDATING DESCRIPTION AND CHARACTER OF WORK: Improving city water under supervision of Park Superintendent.

APPEARS FROM THIS ANALYSIS THAT THE FOLLOWING RESULTS WILL BE OBTAINED:  
 TOTAL FEDERAL MAN-YEARS OF WORK 17 TOTAL FEDERAL MAN-YEARS OF WORK 17

NUMBER OF WORKERS PER MONTH:  
 (A) PERSONS FROM PUBLIC RELIEF ROLLS, PAID FROM FEDERAL FUNDS 27  
 (B) TOTAL PERSONS PAID FROM FEDERAL FUNDS 27  
 (C) TOTAL PERSONS PAID BY SPONSOR 1  
 (D) TOTAL NUMBER OF WORKERS IS PLUS C) 28

PERCENT OF AVERAGE NUMBER OF WORKERS FROM RELIEF ROLLS TO ALL PERSONS:  
 PERCENT FROM FEDERAL FUNDS (A) DIVIDED BY (D) ABOVE: 96

MONTHLY EXPENDITURE PER MAN-YEAR OF LABOR  
 PROJECT CAN BE STARTED 5 DAYS AFTER NOTICE OF APPROVAL AND WILL REQUIRE 27 MONTHS FOR COMPLETION  
The city of Moore has several tracts of land available for this project.  
It is to be located on the water table project will require 17 man-years.

	FEDERAL FUNDS		SPONSOR'S COST.		TOTAL	
	DOLLARS	CENTS	DOLLARS	CENTS	DOLLARS	CENTS
AMOUNT OF ESTIMATED COSTS						
LABOR	109524	100	3200	100	112724	100
EXPENDITURE						
TOTAL						
MATERIAL, EQUIPMENT & OTHER COSTS						
TOTAL COST OF PROJECT	109524	100	3200	100	112724	100

THE PROPOSED PROJECT COMPLIES WITH THE REQUIREMENTS OF THE WORKS PROGRESS ADMINISTRATION, AND APPLICATION FOR ALLOCATION OF FUNDS IS HEREBY MADE.  
 IT IS HEREBY CERTIFIED THAT NOT LESS THAN TWENTY-FIVE PERCENTUM (25%) OF THE AMOUNT TO BE MADE IN CONNECTION WITH THE FOREGOING PROJECT IS TO BE EXPENDED FOR WORK UNDER SUCH PROJECT.

AS TO LABOR, Walter Mullin DATE 8/21/35  
 SIGNATURE  
 AS TO ENGINEERING, Frank C. H. H. H. DATE 8/21/35  
 SIGNATURE  
 DATE 8/21/35  
W. C. H. H. H.

[650]

## EXHIBIT "F"

Deed Book 248 11

STATE OF GEORGIA, COUNTY OF BIBB.

THIS INDENTURE, Made and entered into this the 4th day of February, 1920, between Richard C. Jordan, Samuel B. Hunter, Custis Nottingham, as Trustees of the estate of Augustus Octavius Bacon, parties of the first part, and the city of Macon, party of the second part

WITNESSETH: That the said parties of the first part, in consideration of the devise to the Mayor and Council of the city of Macon, contained in the Will of Augustus Octavius Bacon, of solemn probate in the court of Ordinary of Bibb County, Georgia, and in consideration of the assent of all heirs and legatees of said estate, as evidenced by their writing under date of January —, 1920 hereto annexed and made a part of this conveyance, and in further consideration of the covenants of The City of Macon to pay as a charge against said lands the sum of One Thousand six hundred and sixty five (\$1665.00) Dollars, payable annually on the 4th day of February of each year to grantors herein named during the natural life of Mary Lou Bacon Sparks, said charge to cease and terminate upon the death of the said Mrs. Mary Lou Bacon Sparks, and in further consideration of the agreement on the part of The City of Macon that no taxes or other assessments which may accrue after this date against the property herein conveyed shall be a charge against the other property of said estate;

The Trustees do, for the consideration aforesaid, hereby sell, convey and deliver unto the said The City of Macon, its successors, a



All that tract or parcel of land lying and being in the county of Bibb, State of Georgia, containing one hundred the hundred and seventeen and seven-tenths (117.7) acres, more or less, and being just on the East side of the Ocmulgee River, near the Spring Street Bridge, said property lying on both sides of the public road or street, known as Boulevard, Baconsfield and [651] being more particularly described in Item Nine of the Will of Augustus Octavius Bacon, of solemn probate and record in The Court of Bibb County, Georgia,

Which description is hereby referred to and incorporated as a part of this conveyance, and being more fully shown by plat of said tract attached to said Will, and recorded in Book F, Folio 354, in the Ordinary's Office of Bibb County, and a copy of which plat is hereto attached, and made a part of this deed. These references to said Will and Plats are made for the purposes of a more complete description.

And the said parties of the first part, in consideration of said foregoing stipulations and of the provisions of said Will, do hereby convey to The City of Macon the following personal property, to-wit:

Ten (10) Bonds, Nos. 584 to 593 inclusive, of the Macon Railway & Light Company, each in the sum of One Thousand (\$1,000.00) Dollars, and bearing interest at the rate of five (5) per cent, annually, payable semi-annually, each of said Bonds having attached thereto all coupons unmatured, and the following matures coupons; coupons due in the month of July, 1919, and coupons due in the month of January, 1920, and twenty five hundred (\$2500.00) Dollars in cash, the avails of said Bonds, accrued interest since death of the said Augustus Octavius Bacon, collected by the said Trustees.

IN CONSIDERATION of which the said The City of Macon agrees to appropriate Six Hundred and fifty (\$650.00) Dollars annually for the improvement of said Park, said sum being five (5) per cent. on the aggregate of Thirteen Thousand (\$13,000.00) Dollars thus covered into her Treasury.

IN WITNESS WHEREOF the said parties of the first part, as Trustees of the estate of Augustus Octavius Bacon, have hereunto set their hands and affixed their seals the day and year first above written.

[652] Signed, sealed and de-	Samuel B. Hunter	(L.S.)
livered in the presence of:	R. C. Jordan	(L.S.)
	Custis Nottingham	(L.S.)

A. Ethridge

Julia E. Greene, Notary  
Public, Bibb County, Ga.

As Trustees under last Will  
and Testament of Augustus  
Octavius Bacon.

(For Plat see Book 83, Folio 248)

(Recorded Feb. 10, 1920)

## EXHIBIT "F"

STATE OF GEORGIA, COUNTY OF BIBB  
CLERK'S OFFICE, BIBB SUPERIOR COURT.

I, James Murphy, Dep. Clerk of the Superior Court, a court of record in and for said County, do hereby certify that the foregoing 1 page contains a true and correct copy of Deed from Trustees of the estate of Augustus Octavius Bacon to City of Macon as recorded in Deed Book 248, Page 11 as the same appears of file and record in said Clerk's Office.

Witness my official signature and the seal of said Court, this 2nd day of February, 1967.

/s/ JAMES MURPHY,  
Dep. Clerk, Superior Court  
Bibb County, Georgia

(Superior Court Bibb County, Georgia)  
(Seal)

[653]

## EXHIBIT "G"

Deed Book 248, Page 16

GEORGIA, BIBB COUNTY.

THIS INDENTURE, Made and executed this 4th day of February, 1920, between Custis Nottingham, party of the first part, and the City of Macon, party of the second part;

WITNESSETH: That the said Custis Nottingham is consideration of the sum of Five Thousand, one hundred (\$5,100.00) Dollars, to him this day cash in hand paid by the City of Macon the same being the present cash value of his occupancy of the dwelling house in the Park at Baconsfield, and in consideration of the City of Macon taking over all of said Baconsfield as a Park, and same being fully described in conveyance from Richard C. Jordan, et al., Trustees to the city of Macon, of even date herewith, does remise, release and forever QUIT CLAIM to the said the City of Macon all right, title, interest and equity he has in the premises so occupied by him under Item Four (4) of the Codocil to the Will of Augustus Octavius Bacon, of solemn probate and record in the office of Ordinary of Bibb County, Georgia.

It being Agreed and understood by and between the parties hereto that the said sum of Five Thousand, One Hundred (\$5,100.00) Dollars represents the present cash value of the interest of the said Custis Nottingham in the property and premises herein described and conveyed, being based on the right of occupancy of the said Custis Nottingham to said premises under the terms and conditions of the Will of the late Augustus Octavius Bacon,

deceased; said expectancy being for a term of sixteen (16) years.

And it is further agreed and understood that in the event the possession of the property this day conveyed to the said City of Macon by R. C. Jordan, et al., Trustees, is ever retaken by the said Trustees, or their successors, then, and in that event the said Custis Nottingham agrees to accept from the said city of Macon a surrender of the premises herein conveyed to it and to return to the City of Macon the unearned portion of said Five Thousand, One Hundred (\$5,100.00) Dollars, [654] based upon a sixteen (16) year expectancy.

The premises above referred to are the same occupied at the date of the execution of said will by the said Custis Nottingham and his family, and now occupied by them.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.  
Signed, sealed and delivered in the presence of:

H. Rudisill

Custis Nottingham (L.S.)

Julia E. Greene, Notary Public,  
Bibb County Georgia.

(\$5.50 Revenue stamps cancelled)

(Recorded Feb. 13, 1920)

**EXHIBIT "G"**

**STATE OF GEORGIA, COUNTY OF BIBB**

**CLERK'S OFFICE, BIBB SUPERIOR COURT.**

I, James Murphy, Dep. Clerk of the Superior Court, a court of record in and for said County, do hereby certify that the foregoing 1 page contains a true and correct copy of Deed from Custis Nottingham to the City of Macon as recorded in Deed Book 248, Page 16 as the same appears of file and record in said Clerk's Office.

Witness my official signature and the seal of said Court, this 27th day of April, 1967.

/s/ JAMES MURPHY

Dep. Clerk, Superior Court  
Bibb County, Georgia

(Superior Court Bibb County, Georgia Seal)

[662]

## IN THE SUPERIOR COURT OF BIBB COUNTY

[Title Omitted]

AMENDMENT TO MOTION FOR SUMMARY JUDGMENT  
—Filed June 29, 1967

Come now GUYTON G. ABNEY, J. D. CRUMP, T. I. DENMARK and DR. W. G. LEE as Successor Trustees under the Last Will and Testament of Augustus Octavius Bacon, and tender this amendment to their motion for summary judgment as previously filed:

## 1.

Movants tender this amendment in order to reflect that their motion is based upon certain additional evidence by way of affidavits and aerial photographs and a swimming pool lease attached hereto.

## 2.

Specifically the additional evidence attached hereto consists of the following:

(1) An envelope marked "Exhibit A" containing seven aerial photographs of the Baconsfield area numbered "1" through "7" on their reverse side and initiated by Frank M. Willingham.

(2) An affidavit of Frank M. Willingham, Chairman of the Board of Managers of Baconsfield, identifying the contents of each of the seven photographs by number and also identifying a lease of Baconsfield Pool, hereto as "Exhibit B".

(3) An affidavit of Ralph B. Jones, a commercial photographer, who took the aerial photographs and who identifies them, attached [663] as "Exhibit C".

(4) A lease of Baconsfield Pool from the Board of Managers of Baconsfield to the City of Macon dated December 21, 1948 bearing the original signatures of officials of those two bodies, this lease being attached as "Exhibit D".

WHEREFORE, movants pray that this amendment with its accompanying exhibits be allowed and ordered filed of record.


/s/ JONES, SPARKS, BENTON & CORK  
JONES, SPARKS, BENTON & CORK  
*Attorneys for Movants*



362


[664]

**EXHIBIT A**

(See Opposite) 


364

[665]

(See Opposite) 


366

[666]

(See Opposite) 


368

[667]

(See Opposite) 


370

[668]

(See Opposite) 


372

[669]

(See Opposite) 

374

[670]

(See Opposite) 

[671]

EXHIBIT "B"  
THE SUPERIOR COURT OF BIBB COUNTY

[Title Omitted]

AFFIDAVIT IN SUPPORT OF MOTIONS FOR SUMMARY  
JUDGMENT OF THE HEIRS OF SENATOR A. O. BACON  
AND GUYTON ABNEY ET AL. AS SUCCESSOR TRUSTEES  
UNDER BACON'S WILL

I am Frank M. Willingham. I live on Oakcliff Road in Macon, Georgia and am President of Willingham Cotton Mills in Macon. I have served continuously as a member of the Board of Managers of Baconsfield since about 1954. I was elected Chairman of the Board of Managers of Baconsfield at a meeting on May 21, 1964 to fill that position upon the resignation of former Chairman Charles E. Newton.

The purpose of this affidavit is to explain the contents of seven aerial photographs of the Baconsfield area which I understand are to be placed in evidence by Attorneys for the heirs of Senator Bacon and trustees for certain other of his heirs. I am familiar with the entire Baconsfield area because of my connection with the Board of Managers of Baconsfield. In each of the seven aerial photographs I am able to recognize without difficulty all or a portion of the Baconsfield area. These photographs taken from different angles seem to include the entire park area as well as to show that part of Baconsfield which Senator Bacon left as income producing property.

I am informed the photographs were taken by Mr. Ralph B. Jones of Drinnon, Inc. on June 16, 1967, and information stamped on the reverse side of these prints so indicates.



The seven photographs have been numbered "1" through "7" in ink on their reverse sides, and I have placed my initials beside the said numbers on each print.

I will now give some description of what is seen in each of the seven photographs.

[672] Photograph numbered "1" is a view looking in a generally southeasterly direction. About one inch up from the bottom of the print and very near the center of the print is an intersection of two streets. The street which runs from that point up and to the left reaching the left margin of the print at a point approximately six inches up from the bottom of the same is Nottingham Drive. This street forms what may generally be described as the northeastern boundary of the park area. The street which runs at right angles to Nottingham Drive from the aforementioned intersection toward the right hand margin of the print is Parkview Drive. It forms the northwestern boundary of the park area. The street which comes into view six inches up the left margin of the print and which goes out across the bridge nearest the center of the photograph into the city is known as North Avenue or Spring Street. It forms the southeastern boundary of the park area. Southeast of that street may be seen a cluster of buildings some of which comprise the Baconsfield Shopping Center, which has produced income over the years for the upkeep of Baconsfield. Beyond these buildings may be observed another street known as Emory Highway. There is additional property left by Senator Bacon for the purpose of raising income for his park beyond Emory Highway i. e. southeast of it.

Three inches from the left end of the paper and two and an eighth inches down from the top of the paper one may observe the entrance from North Avenue of a paved street into the Park which is known as Lee Boulevard. This street

may be observed proceeding in a northwesterly direction parallel to Nottingham Drive and then curving sharply to the northeast and then dividing in two as it enters Nottingham Drive leaving a triangular section of grass. The center of this triangle of grass is two inches from the left end of the paper and four and a quarter inches from the bottom of the paper.

[673] Just northwest of where Lee Boulevard comes into Nottingham Drive there may be observed another road running off of Nottingham Drive into the park area in the lower foreground and coming across to dead end in Parkview Drive. This is an unpaved dirt road.

Two other roads running through the park from Lee Boulevard over to Parkview Drive appear. They are paved.

The double ribbon of concrete entering the picture from the right margin at a point approximately three and one-half inches up from the bottom of the paper is newly opened Interstate Highway 16. Since Bacon's grant for the park extended in a southwesterly direction to the Ocmulgee River, this Highway runs across land given in that devise. It was acquired by condemnation. However, before the construction of Interstate Highway 16 the area which has now been raised to underlie the Highway was frequently inundated by floodings of the Ocmulgee River so that the developed part of the park never extended as far toward the River as the present position of Interstate 16.

Photograph numbered "2" is taken from practically the same direction as photograph numbered "1" already discussed.

Photograph numbered "3" is a view of the park area looking in a generally southwesterly direction. Nottingham Drive forming the northeastern boundary of the park may be observed running across the print about two and one

quarter inches from the bottom of the paper. Beyond it may be viewed in succession the Park, Interstate Highway 16, the Ocmulgee River and the City of Macon.

Photograph numbered "4" is a view looking in a generally northeasterly direction. The Ocmulgee River and Interstate Highway 16 may be viewed in the foreground. The street running vertically along the lower left hand of the print about one half inch from the end of the paper is Parkview Drive previously referred to as the northwestern boundary of Baconsfield Park.

[674] Photograph numbered "5" is a view from the southeast. The prominent road down the left hand side of the print is Interstate Highway 16. The structure in the park rather well centered in the photograph and about two and one half inches up from the bottom of the paper is the building known as the Woman's Club. The street passing under Interstate Highway 16 at the lower left corner of the print is North Avenue or Spring Street. The street intersecting Spring Street at about the middle of the print and one and one-quarter inches up from the bottom of the paper and running diagonally out of sight at the bottom right hand corner of the print is the Emory Highway. Bacon's commercial area lies east or southeast of Spring Street. The Baconsfield Shopping Center leased by the Board of Managers to provide an income for the upkeep of the park lies in a triangular area between Spring Street and the Emory Highway. Other parts of Bacon's commercial property lie to the far side of Emory Highway from the park and some portion of that property is shown in the lower foreground in photograph "5".

The entire area in photograph "5" lying between Spring Street and the Emory Highway is not a part of the Baconsfield Shopping Center. Rather the broad alley in the lower

right hand corner of the picture approximately two and three quarter inches from the right hand border of the paper and running parallel with it separates Bacon's income producing property on the left from another unrelated shopping center to the right of that alley.

Photograph "6" is a view toward the west. The Baconsfield Shopping Center leased by the Board of Managers appears in the lower left hand corner in a triangular shape. In the lower left corner there is discernible a sign reading "Piggly Wiggly". The alley just beyond that sign serves as a division between Bacon's triangular shopping center and a similar project nearer the left hand bottom of the picture.

[675] Finally photograph numbered "7" shows a view of property lying southeast of North Avenue. In the center of the photograph and approximately three and three quarter inches from the bottom of the paper are the remnants of Baconsfield Swimming Pool. This pool is located upon what Bacon had designated as a portion of that property to raise income to support his park. The circular roadway passing in close proximity to the ruins of the pool is a ramp to Interstate Highway 16.

A five page lease of this pool from the Board of Managers of Baconsfield to the City of Macon dated December 21, 1948 was operative until May of 1964 when it was cancelled. I have placed my initials on the top of the first page thereof to identify it as the one I refer to and of which I have personal knowledge. During the spring of 1964 the ramp to Interstate Highway 16 was under construction, and heavy road machinery was operating in close vicinity to the pool. The pool was not opened in the summer of 1964 and has not been opened since then.

I have read this five page affidavit in its entirety and it is true and correct in every respect and, if need be, I could and would swear under oath to the truth of its contents in open court.

/s/ FRANK M. WILLINGHAM  
Frank M. Willingham

Personally appeared before me, the undersigned, an officer duly authorized to administer oaths, Frank M. Willingham, who having been placed under oath has sworn that the contents of the foregoing affidavit are true and correct in every respect.

This 28 day of June, 1967.

/s/ H. V. LAMON (N. P. Seal)  
Notary Public Residing in  
Bibb County, Georgia

[676]

## EXHIBIT "C"

## THE SUPERIOR COURT OF BIBB COUNTY

[Title Omitted]

AFFIDAVIT IN SUPPORT OF MOTIONS FOR SUMMARY  
JUDGMENT OF THE HEIRS OF SENATOR A. O. BACON  
AND GUYTON ABNEY ET AL. AS SUCCESSOR TRUSTEES  
UNDER BACON'S WILL

I am Ralph B. Jones. I am now and have been for thirty-five years a professional photographer. For nineteen years I have been associated with Drinnon, Inc., a corporation engaged in the business of photographs and photographic engravings with a place of business at 481 Broadway in Macon, Georgia. I am presently Vice President of Drinnon, Inc. and manager in charge of photography.

During June, 1967, I was requested by Willis B. Sparks, III, (whom I understand to be one of several attorneys representing the heirs of Senator Bacon and the trustees for certain other heirs) to take a series of aerial photographs of Baconsfield including Baconsfield Park and that area which Senator Bacon devised as income producing property for the maintenance of Baconsfield Park. Mr. Sparks requested that I take pictures from various angles in order that all areas of Baconsfield might be observed in one or more of the pictures.

In accordance with his request on June 16, 1967, I took several aerial photographs, from different angles all from an elevation of approximately 1,000 feet. The pictures were taken with a 4 x 5 (film size) Super-Graphic camera. Exposures were made at 1/500 of a second shutter speed with a diaphragm opening of F.11. Also a K-2 haze filter was used.

From un-retouched negatives a series of prints was made at Drinnon, Inc. and on the back of each print appears the following language which serves to identify the photographs as the ones taken as above described:

[677]

"Drinnon, Inc.  
By Ralph Jones  
481 Broadway  
Macon, Georgia" "June 16, 1967"

It is my understanding that this affidavit and the photographs hereby identified are to be placed in evidence in the Superior Court of Bibb County, Georgia as a part of further proceedings in the above captioned case.

I could and would, if it were necessary, freely testify under oath in open court to the truth of the facts contained in this affidavit.

I have read this two page affidavit in its entirety and it is true and correct in every respect.

/s/ RALPH B. JONES  
Ralph B. Jones

Personally appeared before me, the undersigned, an officer duly authorized to administer oaths, Ralph B. Jones, who having been placed under oath has sworn that the contents of the foregoing affidavit are true and correct in every respect.

This 6 day of June, 1967.

/s/ EARL (Illegible) (N. P. Seal)  
Notary Public Residing in  
Bibb County, Georgia.

[678]

## EXHIBIT "D"

## GEORGIA, BIBB COUNTY

THIS CONTRACT made and entered into this the 21 day of Dec., 1948, between the BOARD OF MANAGERS OF BAACONSFIELD, hereinafter sometimes referred to as the "BOARD", the first party, and the CITY OF MACON, a Georgia municipal corporation, hereinafter sometimes referred to as "THE CITY", the second party;

## WITNESSETH :

That in consideration of the improvements now being made by THE CITY upon the swimming pool in Baconsfield, and of the improvements which THE CITY will hereafter make thereon, and of the other covenants and agreements of THE CITY as hereinafter set out, the BOARD hereby leases and grants unto THE CITY, upon the terms and conditions hereinafter set forth and for the period of time designated, the following described real estate, to-wit:

## DESCRIPTION OF PROPERTY:

All that tract or parcel of land situate and being in the East Macon District of Bibb County, Georgia, and in that portion of the tract of land known as Baconsfield, devised to the City of Macon as Trustee, by A. O. Bacon in his last will and testament, lying easterly of Boulevard Baconsfield and also easterly of Emory Drive, upon which is located the swimming pool and adjacent buildings, recently constructed upon such portion of Baconsfield, and known as Baconsfield Pool. The tract of land herein specifically demised is more fully shown upon a plat hereto attached and made a part of this contract and designated thereon as "Swimming Pool Area", to which plat reference is made for



the purpose of a more complete and accurate description.

[679] TERM OF LEASE:

This lease shall commence as of the first day of April, 1948, and terminate at midnight of March 31st, 1950.

If the City is not in default hereunder, then this lease shall automatically be renewed, in accordance with all of its terms and provisions, for similar successive terms of two years; provided that either party may terminate this renewal provision, during either the designated term or any [680] succeeding term, by serving written notice upon the other at least six months prior to the termination date of the then current term, of its desire to terminate such provision, in which event the contract shall be of no further force or effect after the termination date of such current term.

The foregoing provisions shall not be construed as affecting in any way the right of the BOARD, upon the breach by the City of any of its covenants, to terminate either the original term or any succeeding term, as hereinafter provided.

USE OF PREMISES:

Said premises are to be used by THE CITY exclusively for the operation of the said swimming pool, as a part of the pleasure and recreational facilities of Baconsfield, for the enjoyment and benefit of the beneficiaries of the trust for Baconsfield, as set up and established in the said last will and testament of the said A. O. Bacon, deceased, and also for other persons who are or may be admitted to Baconsfield.

**THE OPERATION OF THE SWIMMING POOL:**

THE CITY shall conduct the said swimming pool, through such agents and servants, and in such manner and for such periods of time during the term of this lease as within its discretion is deemed appropriate, subject only to the powers of the Board of Managers of Baconsfield, as set forth in the Ninth Item of the said will of A. O. Bacon, and most particularly subject to the "restrictions, government, management, rules and control of the Board of Managers", and to such regulations and rules for the use and enjoyment of Baconsfield as said BOARD may adopt and make applicable to all of Baconsfield.

**RENTAL:**

It is understood and agreed that THE CITY shall make charges to those who use the swimming pool and the swimming pool area as it desires, such charges being made for the purpose of [681] carrying on a successful operation of such swimming pool.

It is further agreed that in the conduct of such operation, the rental which the BOARD obtained from Johnny Smith, of Bibb County, Georgia, under and by virtue of the contract entered into between the BOARD and Johnny Smith, a copy of which is hereto attached, together with any rental or remuneration which the BOARD may receive by virtue of any other concession or lease which it may grant or make to any other person, in the event the within contract with Johnny Smith is terminated prior to the end of the term thereby granted, shall be pooled with the income obtained by THE CITY from the operation of the swimming pool and the swimming pool area, and after the deduction of the expense of the operation, the balance remaining, if any, shall then be divided equally between THE CITY and the BOARD.

In the event that there is any loss resulting from the operation of the said swimming pool and swimming pool area, by THE CITY, such loss shall be borne by THE CITY, so that in no event shall the BOARD be required to contribute to such operation anything other than the net rental or net income from the concessions and leases above referred to.

*Covenants of the City:*

THE CITY covenants and agrees with the Board:

(1) That it will open the said swimming pool as soon as it has been completed and operate the same during seasonable weather throughout the balance of the term of this lease.

(2) That it will comply with the provisions of the said Trust for Baconsfield and with such restrictions, rules and regulations for the use and enjoyment of Baconsfield, as the BOARD may from time to time, adopt and make applicable to all of Baconsfield.

(3) That it will make no sub-lease nor grant any [682] concession for the sale of any article or the operation of any amusement device upon the demised premises, or otherwise in connection with the operation of the swimming pool, nor permit any act to be done or performed which will adversely affect the rights of the lessee in the attached contract, or the rights of the BOARD with respect to the granting of any subsequent lease upon or concession in that area shown upon said plat and designated as "Refreshment Concession", nor with the grant of any concession by the BOARD upon any portion of Baconsfield which lies east of Boulevard Baconsfield and Emory Highway.

(4) That it will on or before December 1st of each year during the term of this lease, furnish THE BOARD with an

accounting of all receipts and disbursements for the period terminating with September 30th of such year.

In the event that it breaches any of its covenants, numbered 1 to 4, inclusive, and fails to correct such breach within five days after written notice thereof, to the Mayor of the City of Macon, then the BOARD shall have the right to immediately terminate this contract, assume possession and control and management of the swimming pool and the swimming pool area, in which event all rights of THE CITY hereunder, except such rights as it may have with regard to the net revenue earned to the date of such termination, shall cease and determine.

IN WITNESS WHEREOF, the parties hereto, acting by and [683] through their respective duly authorized officers, have hereunto set their hands and affixed their seals the day and year first above written.

BOARD OF MANAGERS OF BACONSFIELD  
/s/ DR. W. G. LEE

Chairman

Attest: / C. E. NEWTON, JR.  
Secretary

THE CITY OF MACON  
/s/ (Illegible) B. WILSON

Mayor

/s/ VIOLA ROSS NAPIER

City Clerk

(CITY OF MACON SEAL)

[686]

CERTIFIED COPY OF EXCERPT FROM RESOLUTION OF MAYOR AND  
COUNCIL OF CITY OF MACON ADOPTED JULY 22, 1947

Filed June 29, 1967.

[EMBLEM]

CITY HALL  
CITY OF MACON  
GEORGIA

June 27, 1967.

NOW, THEREFORE, BE IT RESOLVED, that the Treasurer of the City of Macon immediately deliver to the Board of Managers of Baconsfield, either in cash or in securities, or in both cash and securities, the said fund of One Hundred Thousand (\$100,000.00) the same to be held by the Board of Managers of Baconsfield in separate fund and used by such Board solely for the construction of said pool, with its adjacent buildings and accessories.

I do hereby certify the above is a true and correct excerpt from Resolution of Mayor and Council of the City of Macon adopted July 22, 1947.

Witness my hand and seal of the City of Macon this 27th day of June, 1967.

/s/ ALEX B. CAMERON  
Alex B. Cameron,  
Clerk of Council.

(CITY OF MACON SEAL)

In addition \$40,000.00 was appropriated by Mayor and Council by ordinance adopted December 23, 1947 for the year 1948 for the Recreation Department to construct bath houses.

FILED IN OFFICE  
29th day of June, 1967

/s/ LILLIAN LAVINE  
Deputy Clerk

[687]

## IN THE SUPERIOR COURT OF BIBB COUNTY

[Title Omitted]

ORDER MAKING ATTORNEY GENERAL A PARTY TO CASE  
—Filed July 21, 1967

The above captioned case having come back to this Court on remand from the Supreme Court of Georgia for further proceedings and a hearing having been held on June 29, 1967, on a motion for summary judgment filed on behalf of the heirs of the late Senator A. O. Bacon and counsel for the heirs, for the intervenors E. S. Evans, et al., for the Board of Managers of Baconsfield and successor trustees in lieu of the City of Macon formerly appointed by this Court and for the City of Macon all being present and all having been heard in open Court and it being made to appear that the Attorney General of Georgia, Honorable Arthur K. Bolton should be made a party to this case pursuant to Georgia Code Section 108-212 (Acts 1952, pp. 121, 122; 1962, p. 527);

IT IS THEREFORE NOW ORDERED AND ADJUDGED that the Attorney General of Georgia in his official capacity is by this ORDER made a party to this case. Let a copy of this ORDER together with copies of the following materials be forthwith served upon the Attorney General:

- [688] (1) A Xerox copy of the record in the case of *Evans v. Newton* as it was printed for the Supreme Court of the United States (including therein the decision of the Georgia Supreme Court sought to be reviewed).
- (2) A copy of the motion for summary judgment by Guyton Abney, et al. as successor trustees under the Will of A. O. Bacon and an Order

of Bibb Superior Court dated November 10, 1966, allowing it to be filed of record.

- (3) A copy of a document entitled, "Response to Motion for Summary Judgment filed by Successor Trustees under Will of Augustus Octavius Bacon," such document being filed on behalf of Rev. E. S. Evans, et al., intervenors with a certificate of service dated January 12, 1967, and signed by Attorney William H. Alexander.
  - (4) An unheaded document with a certificate of service dated January 16, 1967, signed by Attorney George C. Grant, filed as a response by the successor trustees in lieu of the City and the Board of Managers of Baconsfield to the motion for summary judgment.
  - (5) A document entitled, "Response to Motion for Summary Judgment filed by successor trustees under Will of Augustus Octavius Bacon," such document being filed on behalf of Willis B. Sparks, Jr. and others as the "Sparks heirs" of Senator Bacon. This document bears a certificate of service signed as of January 13, 1967.
- [689] (6) A 36-page copy of the record of the hearing in Bibb Superior Court before Judge Oscar L. Long held on June 29, 1967.

IT IS HEREBY ORDERED that said Attorney General shall have 30 days from receipt by him of these materials and a copy of this ORDER in which to make any written response by way of pleadings as he shall deem appropriate. He may make application to this Court within the 30 day period for an extension of time if he should deem it necessary or appropriate to do so.

It is contemplated that counsel for one or more of the parties will confer with the Attorney General or some attorney on his staff as to the nature of these proceedings, the Attorney General being a newcomer to a rather lengthy case with a voluminous record.

[690] Counsel for the heirs of Senator A. O. Bacon are hereby DIRECTED to make available to the Attorney General such copies of such materials as he after consideration feels he would wish to have for his consideration. Of course, any counsel representing any party to the case may provide the Attorney General with copies of any parts of the record he feels the Attorney General should have at his disposal.

There shall be no future oral hearing or argument unless one shall be expressly requested of this Court by the Attorney General or some assistant acting on his behalf within 30 days of the receipt by him of the ORDER of this Court making him a party to the case.

Let the Attorney General of Georgia sign an acknowledgment of service of this ORDER and accompanying materials as specified herein and immediately transmit it to the Clerk of Bibb Superior Court so that it may be filed of record. Let a copy of this ORDER be served upon all counsel of record in this proceeding.

IT IS SO ORDERED this 21st day of July, 1967.

/s/ O. L. LONG  
O. L. LONG  
J.S.C.M.C.

/s/ LILLIAN LAVINE  
Deputy Clerk

FILED IN OFFICE  
21st day of July, 1967



[695]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[Title Omitted]

INTERVENORS' SECOND SUPPLEMENTAL RESPONSE TO MOTION  
FOR SUMMARY JUDGMENT FILED BY SUCCESSOR TRUSTEES  
UNDER THE WILL OF A. O. BACON—Filed June 29, 1967

Come now, REV. E. S. EVANS, LOUIS H. WYNNE, REV. J. L. KEY, REV. BOOKER W. CHAMBERS, WILLIAM RANDALL and REV. VAN J. MALONE, intervenors, who file this Second Supplemental Response to the Motion for Summary Judgment filed by the successor trustees under the will of A. O. Bacon, and show the Court the following:

—1—

That attached hereto and incorporated herein by reference, are the following exhibits:

(a) Exhibit J—Affidavit of William H. Alexander, attorney for intervenors.

(b) Exhibit K—Certified copy of records of the Work Projects Administration, Record Group 69, Microfilmed Project Folders, Georgia: Selected Documents from the Project Folder Relation to Official Project 665-34-2-164 (Roll 236-W).

(c) Exhibit L—Certified copy of records of the Work Projects Administration, Record Group 69, Selected pages from the Microfilmed Project Ledgers for Georgia relating to Official Project 665-34-2-164 (Roll 69W).

[696] (d) Exhibit M—Certified copy of records of Work Projects Administration, Record Group 69, Microfilmed Project Folders, Georgia: Selected Documents from the

Project Folder relating to Official Project 65-1-34-52 (Roll 2990W).

(e) Exhibit N—Certified copy of records of Work Project Administration, Record Group 69, Selected pages from Microfilmed Project Ledgers for Georgia relating to Official Project 65-1-34-52 (Roll 71W).

(f) Exhibit O—Certified copy of excerpt from minutes of the City Council of the City of Macon dated February 3, 1920.

(g) Exhibit P—Certified copy of excerpts from minutes of the City Council of the City of Macon dated February 17, 1920.

(h) Exhibit Q—Certified copy of excerpt from minutes of the City Council of the City of Macon dated July 21, 1936.

(i) Exhibit R—Certified copy of excerpt from minutes of the City Council of the City of Macon dated June 21, 1938.

(j) Exhibit S—Certified copy of excerpt from minutes of the City Council of the City of Macon, constituting the City Budget for 1939, dated January 10, 1939, page 30.

(k) Exhibit T—Certified copy of excerpt from minutes of the City Council of the City of Macon, constituting the City Budget for 1939, dated January 10, 1939, page 31.

(l) Exhibit U—Certified copy of excerpts from minutes of the City Council of the City of Macon, constituting the City Budget for 1940, dated December 26, 1939, page 199.

[697] (m) Exhibit V—Certified copy of excerpt from minutes of the City Council of the City of Macon dated July 15, 1947.

—2—

A certificate of the Clerk of the City Council of the City of Macon dated June 27, 1967, and pertaining to resolutions of the City Council of July 22, 1947, and December 23, 1947, was offered into evidence and admitted without objection in open court at the hearing in this case on June 29, 1967. (See transcript of hearing page 31.) For purposes of the record that document is hereby designated as Exhibit I.

—3—

The Baconsfield Clubhouse, a building located in Baconsfield Park was erected with the assistance of federal funds totaling approximately \$16,512.80 furnished by the Works Progress Administration, an agency of the United States, in accordance with two projects sponsored by the City of Macon acting with a group known as the Woman's Club House Commission as more fully reflected in Exhibits J, K, L, M, N and R attached hereto. In its applications for federal funds for this project, the City of Macon, by its Mayor and Treasurer, executed numerous documents constituting agreements, assurances, certificates, representations and contracts, which are contained within Exhibits K and M. The City repeatedly represented to the United States, *inter alia*, that it was sole owner of the Baconsfield Park property, that its ownership was perpetual, that there were no reversionary or revocation clauses in the ownership documents, that the property was not private property, and that the proposed project was for the use [698] or benefit of the public. In a sworn certificate executed under oath by the Mayor and Treasurer of the City of Macon on October 14, 1938, and quoted in full below, the City promised that there would be no discrimination against any group or individual in the use of

the property and that the City did not intend to release jurisdiction of the property during its useful life. The entire certificate, which is contained in Exhibit K attached hereto, reads as follows:

"With reference to Works Progress Administration Project Application State Serial No. 6586, this is to certify that the proposed building referred to in plans, specifications and other data submitted to support the project applications, as 'Baconsfield Club House' will, upon completion, be used as a community club house for the general use and benefit of the public at large, without discrimination against any individual, group of individuals, association, organization, club or other party or parties who may desire the use of the building and the property upon which the building is located.

"It is further certified that the City of Macon, as project sponsor and owner of the property upon which the building is to be constructed, does not intend to lease, sell, donate or otherwise convey title or release jurisdiction of the property together with improvements made thereon, during the useful life of the improvements placed thereon through the aid of W. P. A. funds.

"It is further certified that the City of Macon, as project sponsor, will be responsible to see that the property together with the improvements made thereon will be maintained for the general use and benefit of the public, and will not be [699] used for the profit or benefit of any one individual or specific group or organization; and the management of the property, together with improvements made thereon, will at all times be subject to the approval of the designated city official or officials of the City of Macon who will

be responsible to see that the foregoing certification is adhered to."

/s/ CHARLES L. BOWDEN  
Mayor, City of Macon, Georgia

/s/ FRANK BRANAN  
Treasurer, City of Macon, Georgia

Sworn to and subscribed before me  
this 14th day of October, 1938.

/s/  
Notary Public  
Bibb County, Georgia

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[700] Another certificate or agreement containing assurances that the property would not be disposed of to any private individual and would be operated for the benefit of the general public, dated September 7, 1938, was executed by the Mayor and Treasurer of the City of Macon and by the President and Treasurer of the Women's Club House Commission, and is a part of Exhibit M, attached hereto.

It would be a violation of intervenors' rights under the due process and equal protection clauses of the Fourteenth Amendment, as well as a violation of their rights under the federal statutes pursuant to which the Works Progress Administration furnished funds for Baconsfield Park, i. e., the several Emergency Relief Appropriations Acts enacted by the Congress in 1935, 1936, 1937, 1938 and 1939, for the court to grant the relief requested by the successor trustees' motion for summary judgment, and for the court to refuse to order the continued operation of Baconsfield as a public park maintained without racial discrimination.

On February 3, 1920, the City of Macon entered into an agreement with the Executors and Trustees of the Estate of Senator A. O. Bacon, with the written assent of all legatees and beneficiaries of the estate, by the terms of which the trustees deeded all of the Baconsfield Park property together with certain bonds and accumulated interest to the City of Macon, in consideration of various promises of the City to pay an annuity of \$1,665 per annum to the trustees during the life of Mrs. Mary L. Bacon Sparks. The terms of the agreement are set out in Exhibit O attached hereto. By deed executed February 4, 1920, [701] and recorded February 10, 1920, in the Clerk's office of the Bibb Superior Court in Deed Book 248, page 11 (which deed has heretofore been filed herein as Exhibit F), all interests of the trustees and heirs and legatees of Senator Bacon was conveyed to the City of Macon. The City paid to the trustees under the will of A. O. Bacon the agreed annuity for 25 years from 1920 until the death of Mrs. Mary L. Bacon Sparks in April 1944, that is a total of \$41,625.

On February 3, 1920, the City of Macon, also entered into an agreement with Custis Nottingham, one of the executors and trustees under the will of A. O. Bacon, wherein Nottingham agreed to surrender his occupancy of a residence at Baconsfield in return for a cash payment from the City of \$5,100. The City appropriated this amount and paid it to Custis Nottingham. (See Exhibit O, attached hereto.) Custis Nottingham, by quit claim deed conveyed all his interest in the said Baconsfield Park property to the City of Macon. The said deed, previously filed herein as Exhibit G, was executed February 4, 1920, and recorded February 13, 1920, in the Clerk's office of the Bibb Superior Court in Deed Book 248, page 16.

In view of the foregoing the successor trustees under the will of A. O. Bacon, and all legatees and beneficiaries of the estate of of A. O. Bacon, are estopped from claiming any right, title or interest in the Baconsfield trust property, and from claiming the relief sought in the successor trustees' pending motion for summary judgment. Intervenor also rely upon these facts and circumstances in connection with their opposition to the grant of relief sought by the motion for summary judgment based upon the Fourteenth Amendment to the Constitution of the United States.

—5—

[702] An application of the reverter doctrine or other doctrine finding a failure of the trust on the facts of this case would amount to a judicial sanction which imposed a penalty because the agencies managing Baconsfield Park fulfilled their Fourteenth Amendment obligation to operate the park on a racially nondiscriminatory basis. The use of such a judicial sanction in these circumstances would violate the intervenors' rights under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

—6—

The due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States require that the racially exclusionary words of Senator A. O. Bacon's will relating to Baconsfield Park be treated by the courts as *pro non scripto* as though they were never written. This is required, firstly, because the racially exclusionary terms were written in the will to conform to racially exclusionary suggestions and requirements of Georgia Code Section 69-504 (Georgia Acts 1905, p. 117). The racial portions of Section 69-504 are void under the Fourteenth Amendment, and indeed were void

*ab initio* even under the "separate but equal" doctrine, by authorizing the total exclusion of Negroes from public parks, and thus must be regarded as *pro non scripto*. Secondly, it is required because by the City's acceptance of the park, pursuant to Georgia Code Section 69-505 (Georgia Acts 1905, pp. 117-118), and its operation of the park in accordance with Bacon's will, the will was made a part of the City's own laws governing the operation and use of the park, and is to be [703] treated in the same manner as if the racially exclusionary words appeared in a city ordinance.

—7—

There is a public easement in the Baconsfield Park land, as in the case of a "commons," which exists separate and apart from the City's legal title as trustee, and which may not be defeated or affected by the termination of the trust.

The Baconsfield Park property was dedicated to the public and the dedication was accepted, thus the property may not now be appropriated for private use.

To grant the relief sought by the successor trustees would be a violation of Georgia Code Section 85-410, which provides as follows:

85-410. *Dedication lands to public use, effect of.*—

If the owner of lands, either expressly or by his acts, shall dedicate the same to public use, and the same shall be so used for such a length of time that the public accommodation or private rights might be materially affected by an interruption of the enjoyment, he may not afterwards appropriate it to private purposes.

—8—

The City of Macon has not offered any justification for its request for permission to resign as trustee of Bacons-



field except in its inability to conform to the racially exclusionary portions of the will of Senator Bacon. The City Council has not taken any further action renewing its request to resign as trustee subsequent to the decision of the United States Supreme Court in this case. Furthermore, the provisions of Senator Bacon's will plainly contemplated that the Mayor and [704] City Council of Macon should select a successor trustee if the City was legally unable to continue as trustee. The referenced portions of Senator Bacon's will, which appear in item 10th of the will (at page 24 of the record as printed for use in the Supreme Court of the United States), are as follows:

If for any reason it should be held that the Mayor and Council of the City of Macon have not the legal power under the charter of the City to hold said fund in trust for the purposes specified, then unless said power is obtained through appropriate legislation, I direct that the powers herein expressed be conferred upon a trustee to be selected by the Mayor and Council of the City of Macon, with such safeguards and restrictions as may be prescribed by them for the perpetual safekeeping and management of the fund. And I give a similar direction if for any reason it should be held that the Mayor and Council of the City of Macon have not the legal power under their charter to hold in trust for the purposes specified the property designated for said park and pleasure ground, unless said required power is conferred by appropriate legislation.

—9—

By virtue of all the facts and circumstances presented on the record of this case the City of Macon has so invested the Baconsfield Park with a public character, and the City

has become involved to such an inextricable extent, that it would be a violation of the intervenors' rights under the due process and equal protection clauses of the Fourteenth Amendment for the state courts to apply any state law doctrines [705] (whether relating to trust law, the law of dedication, real property law, or other principles), so as to defeat the rights of the intervenors to racially non-discriminatory use and access to the park as a public park.

[706] WHEREFORE, intervenors pray that this Court:

(a) Grant them the relief heretofore prayed in their Response and in their Supplemental Response to the Motion for Summary Judgment;

(b) Enter an order which will assure and protect their right to racially nondiscriminatory use and access to Baconsfield Park and all its facilities; and

(c) Grant them such other and further relief as to this Court may seem just and proper.

This 9th day of August, 1967.

/s/ WILLIAM H. ALEXANDER  
WILLIAM H. ALEXANDER  
859½ Hunter St., N. W.  
Atlanta, Georgia 30314

JACK GREENBERG  
JAMES M. NABBIT, III  
10 Columbus Circle  
New York, New York 10019  
*Attorneys for Intervenors*

(Certificate of Service Omitted in Printing.)

[708]

## EXHIBIT "J"

## AFFIDAVIT OF WILLIAM H. ALEXANDER

GEORGIA, FULTON COUNTY.

I, WILLIAM H. ALEXANDER, one of the attorneys for Rev. E. S. Evans, et al., intervenors in the case of *Charles E. Newton, et al., v. City of Macon, et al.*, Bibb Superior Court, Case No. 25864, being duly sworn, depose and say:

1. That on June 29, 1967, I made an inspection of, and a personal visit to, the inside of the Woman's Clubhouse located on Baconsfield Park in the City of Macon, Georgia.

2. That I was accompanied on said inspection by James M. Nabrit, III, Esq., one of the attorneys for said intervenors.

3. That at the time that I made the said inspection I saw two plaques bolted to one of the walls inside of the said clubhouse.

4. That the following are exact copies of the information or wording contained on each of the plaques:

*Plaque No. 1:*

"Baconsfield Woman's Club

Erected 1939

By Macon Women's Club

Pilot Club

Business and Professional Women's Club

With Assistance From

Works Progress Administration

Building Committee

Kate Crump Booth  
Odessa Pierce Williams  
Mamie Walton Vinson  
Ellamae Ellis League  
Architect"

[709]

*Plaque No. 2:*

"Built by  
Works Progress  
Administration  
1939"

This 7 day of August, 1967.

WILLIAM H. ALEXANDER  
William H. Alexander  
859½ Hunter St., N. W.  
Atlanta, Georgia 30314

Subscribed and sworn to before me,  
this 7th day of August, 1967.

ALICE M. LEWIS  
Notary Public

(N. P. Seal)

Notary Public, Georgia State at Large  
My Commission Expires June 24, 1968

[710]

## EXHIBIT "O"

February 3, 1920—Pages 106-107

The following resolution by alderman Merritt and unanimously adopted after an explanation of the same made by the Mayor:

"Be it resolved by the Mayor and Board of Alderman of the City of Macon, that the Mayor be and is hereby, authorized in behalf of the City of Macon to make and enter into a contract with the Executors of the Estate of A. O. Bacon, deceased, to take possession of the property known as "Baconsfield" upon the terms and conditions as set forth in the communication this day submitted to this Council by R. C. Jordan and Curtis Nottingham, Executors and Trustees of the Estate of A. O. Bacon, deceased.

"Be it further resolved that the Mayor be, and is hereby, authorized to make and enter into a contract with Custis Nottingham to secure the possession of the house now occupied by said Custis Nottingham on said property known as 'Baconsfield', said Custis Nottingham under the terms of said contract shall surrender and terminate any and all rights that he may now have—, or hereafter acquire, to the occupancy of said house or any of the property used in connection with his occupancy of said house.

"Be it further resolved that the said Custis Nottingham shall be paid a sum not in excess of \$5,100.00 as full and final payment and settlement of his surrender of said premises, and the termination of such rights of occupancy as he may hold to said premises, and that the sum of \$5,100.00 be, and is hereby, appropriated for said purpose."

The following communications were accompanied by said resolution:

"To the Honorable Mayor and Council of the City of Macon:

"We beg to advise that we will assent to your immediate possession of the tract known as 'Baconsfield', devised by Senator Augustus O. Bacon to you as a park. This assent is predicated upon the signed agreement executed by all of the legatees and beneficiaries of the estate that you account to us in the amount of \$1,665.00 annually as the rental value of said property [711] during the life of Mrs. Marilu Bacon Sparks.

"At the time of delivering possession of this property to you, we will also deliver to you, under terms 9 and 10 of said will, \$10,000.00 in Five Per Cent. Macon Railway & Light Company Gold Bonds and accrued interest thereon, amounting to approximately \$3,000.00, the aggregate of which you will cover into your Treasury for the improvement of said park, executing to us an agreement as to future appropriations for maintenance of park or at least five per cent annually on said sum of \$10,000.00 in five per cent. gold bonds, plus five per cent. interest on the amount of accrued interest at the dates said sums are delivered.

"It is also understood that the other estate of Senator Bacon will not be charged with taxes or other assessments of any nature or kind against this property accruing after this property is delivered to you.

"As this Park will not only be of immense benefit to the City, but is established by the Senator as a memorial to his deceased Boys, we assure you of our earnest desire to expedite its enjoyment and improvement.

(Signed) R. C. JORDAN

CUSTIS NOTTINGHAM

Executors and Trustees of the Estate of  
Senator A. O. Bacon."

"To the Honorable Mayor and Council of the City of Macon:

"In consideration of your taking over the property at BACONSFIELD devised as a Park, I hereby agree that my occupancy of the residence on same will be adjusted and terminated on the basis agreed upon between the Mayor, the City Attorney and myself, to-wit: Fifty One Hundred (\$5100.00) Dollars.

"You may, at any time within fifteen days from this date, exercise this option and take over said residence.

(Signed) CUSTIS NOTTINGHAM."

[712] I, Alex Cameron, Clerk of the City of Macon, Certify that the resolution and communications on the attached page are accurate statements of the official minutes of the City Attorney and myself, to-wit: Fifty One Hundred Minutes of the Council dated February 3, 1920, Pages 106-107.

(Signed) ALEX B. CAMERON  
Alex Cameron  
Clerk, City of Macon, Georgia

(Seal) Seal of the City of Macon, Georgia 1823

## EXHIBIT "P"

February 17, 1920—Page 112

The Mayor called attention to the taking over by the City of the Baconsfield Park under the will of the late U. S. Senator A. O. Bacon. The terms of this will, he said, provide that the park shall be under the control and management of four ladies and three men, and that Senator Bacon had requested that one of the members, at all times as far as practicable, be one of his blood relations. He stated that this Board of Control is to be first named by the Mayor and Council and thereafter is to be self-perpetuating, vacancies being filled by the remaining members of the Board and confirmed by the Mayor and Council.

The Council then went into the election of the Board of Control referred to, the result being as follows:

Mrs. Willis B. Sparks,  
Mrs. W. P. Coleman,  
Mrs. H. M. Wortham,  
Mrs. P. L. Hay,  
Mayor G. Glen Toole,  
Dr. W. G. Lee,  
Mr. John L. Anderson.

In nominating Mayor Toole as a member of this Board, Alderman Hunnicutt had the Clerk read the following communication addressed to Mayor by Messrs. R. C. Jordan and Custis Nottingham, the trustees of the Bacon Estate:

"In turning over to the City of Macon the park devised to it by Senator Bacon, permit us to express the hope that this Park will mean all to the white citizens of Macon that Senator Bacon wished it to mean.



"The place is one of great natural beauty, but it could easily be marred by haphazard work. We are sure that before anything material is done to this property that you, the City Council, and the Commission appointed by it will have a well defined and permanent plan of improvement in view.

"We believe that it is of the utmost importance that you be a member of this Commission, and wish here to voice the hope that you will not decline such service from any false [714] modesty. It will greatly expedite the people's enjoyment of this property if the Commission is headed by the head of our City Government. Differences in opinion and change of plans will be thus avoided, and the money essential to the improvement of this property will be expended by the one charged with raising it."

The Clerk was directed to notify the members of their election.

I, Alex Cameron, Clerk of the City of Macon, certify that the above is an accurate excerpt of the official minutes of the City Council of the City of Macon as contained in Minutes of the Council dated February 17, 1920, Page 112.

(Signed) ALEX B. CAMERON  
Alex Cameron  
Clerk, City of Macon, Georgia

(SEAL OF THE CITY OF MACON, GEORGIA 1823)

[715]

## EXHIBIT "Q"

July 21, 1936—Page 427

The Committee on Finance reported on the following resolution as follows:

## RESOLUTION

WHEREAS, the late Senator A. O. Bacon, by his last will and testament, set aside property now known as "Baconsfield Park", in trust for the sole, perpetual, and unending use, benefit, and enjoyment of the white women, white girls, white boys, and white children of the City of Macon, to be by them forever used and enjoyed as a park and pleasure ground, subject to the restrictions, government, management, rules and control of the Board of Managers," and,

WHEREAS, the Board of Managers of said property, now consisting of G. Glen Toole, Chairman, Dr. W. G. Lee, Secretary and Treasurer, Herbert I. Smart, Mrs. P. L. Hay, Mrs. Frederick Williams, Mrs. Thomas J. Stewart, and Mrs. H. M. Wortham, believing that the generous and kindly purpose of Senator Bacon will be further served, and the use of "Baconsfield Park" rendered more enjoyable to his beneficiaries, have resolved, if possible, to install and maintain upon "Baconsfield Park" a swimming pool, to be used by the members of the public described in the will of Senator Bacon, and,

WHEREAS, in order to finance the construction of the swimming pool, the Board of Managers have resolved that the funds be secured in three ways, to wit:

(1) By the City of Macon Converting into cash, in accordance with item 10 of the will of Senator Bacon, ten bonds of the Macon Railway and Light Company, of the

denomination of \$1,000.00 each, which were provided by Senator Bacon for the upkeep and maintenance of said "Baconsfield Park;"

(2) By obtaining from an agency of the Federal Government a grant of money to be used for the intended purpose;

(3) By obtaining from public spirited citizens of [716] Macon loans to bear interest at the rate of three (3) per cent. per annum, and to be repaid pro rata from the net income derived by the Board of Managers from small fees charged persons using the swimming pool and facilities; and,

WHEREAS, in reference to the request made of the City of Macon by the Board of Managers in respect to the ten bonds of the Macon Railway and Light Company, it is provided in the will of Senator Bacon, and in Item 10 thereof, "Should the Mayor and Council of the City of Macon at any time consent to do so, then I direct that they be authorized to receive the fund constituted of said bonds and all additions thereto, and the proceeds thereof, and cover the same into the treasury of the City, in consideration of the perpetual obligation of the City to be evidenced by its bond or otherwise, to provide and pay over annually to the said Board of Managers an amount equal to five per centum interest upon the sum thus covered into the treasury, to be devoted by said Board to the uses hereinbefore specified,"

Now, THEREFORE, the Mayor and Board of Alderman of the City of Macon, by this resolution endorse the action taken by the Board of Managers of Baconsfield Park, and pledge their support of the object sought, calling upon and enlisting the aid of all citizens in the efforts of the Board of Managers to obtain a portion of the cost of such

swimming pool by loans from citizens, and pledging themselves in the name and behalf of the City of Macon to provide by ordinance or resolution, if legally possible, and if the Board of Managers is successful in obtaining from a Federal agency and from the public generally the balance of the cost of such swimming pool, the proceeds of the Macon Railway and Light Company bonds, in accordance with the provisions of Senator Bacon's will, and to pledge such proceeds to the cost of the swimming pool and facilities.

[717]

#### REPORT OF FINANCE COMMITTEE

"Your committee recognizes the importance of a municipal swimming pool in our city, and there has been submitted to the Public Works Administration in Washington, D. C., a project for the erection of one.

If and when the necessary funds are secured from the Federal Government and other sources, we recommend that these bonds be sold and the proceeds used on the above named project." This report was adopted.

I, Alex Cameron, Clerk of the City of Macon, certify that the above Resolution and Report are accurate copies of the official minutes of the City Council of the City of Macon as contained in Minutes of the Board dated January 21, 1936, Page 427.

(Signed) ALEX B. CAMERON  
Alex Cameron  
Clerk, City of Macon, Georgia

(SEAL OF THE CITY OF MACON, GEORGIA 1823)

[718]

## EXHIBIT "R"

June 2, 1938—page 639

The members of the Baconsfield Club House Commission composed of representatives of the Macon Women's Club, the Business and Professional Women's Club and the Pilot Club, were present and Alderman Harrold introduced them to Council. Mayor Bowden invited them to be heard and the spokesman, Mrs. Leonard Booth, came forward and asked permission of Council for the clubs represented by the Commission to build with W. P. A. assistance, a new Woman's Club House in Baconsfield and to tear down the house now used as a club house by the women and use such of the materials as are suitable in the construction of the new building. She said that the new club house would be a memorial to Senator Bacon and would be a \$15000.00 building, of which cost the clubs will obligate themselves to pay three thousand dollars. She said the clubs will sell bonds to raise this money.

On motion of Alderman Harrold, seconded by Alderman Pittman, the permission sought, was granted by the Mayor and Council.

Mayor Bowden appointed the following gentlemen to be members of the Housing Authority for the City of Macon subject to the approval of the Governor of Georgia:

J. Clay Murphey, Chairman, to serve for a period of five years,

W. T. Anderson, to serve for four years

George R. Williams to serve three years

Wallace Cobb to serve two years, and

Ernest D. Black, to serve one year.

Adjournment.

[719]

I, Alex Cameron, Clerk of the City of Macon, certify that the above is an accurate excerpt of the official minutes of the City Council of the City of Macon as contained in Minutes of the Council dated June 21, 1938, Page 639.

(Signed) ALEX B. CAMERON

Alex Cameron

Clerk, City of Macon, Georgia

(SEAL OF THE CITY OF MACON, GEORGIA 1823)

[720]

**EXHIBIT "S"**

January 10, 1939—Page 30

**23. Central City & Baconsfield Parks**

a. Labor .....	\$ 7,000.00
b. Repairs to parts and equipment .....	800.00
c. Repairs to Building .....	1,200.00
d. Lights Central City Park .....	40.00
	<hr/>
	\$ 9,040.00

I, Alex, Cameron, Clerk of the City of Macon, certify that the above is an accurate copy of the official minutes of the City Council of the City of Macon as contained in Minutes of the Board dated January 10, 1939, Page 30.

(Signed) ALEX B. CAMERON  
 Alex Cameron  
 Cler, City of Macon, Georgia

(SEAL OF THE CITY OF MACON, GEORGIA 1823)

[721]

## EXHIBIT "T"

January 10, 1939—Page 31

## 35. Miscellaneous

a. Baconsfield Park Annuity .....	\$ 1,655.00
b. Insurance on Public Property .....	1,900.43
c. Self Insurance-Compensation Act ..	100.00
d. Auditing .....	900.00
e. Chamber of Commerce .....	500.00

---

\$ 5,065.43

I, Alex Cameron, Clerk of the City of Macon, certify that the above is an accurate copy of the official minutes of the City Council of the City of Macon as contained in Minutes of the Board dated January 10, 1939, Page 31.

(Signed) ALEX B. CAMERON  
Alex Cameron  
Clerk, City of Macon, Georgia

(SEAL OF THE CITY OF MACON, GEORGIA 1823)



[722]

## EXHIBIT "U"

December 26, 1939—Page 19

## 34. Miscellaneous

a. Baconsfield Park Annuity .....	\$ 1,665.00
b. Insurance on Public Property .....	2,048.50
c. Self Insurance Compensation Act ..	100.00
d. Auditing .....	900.00
e. Chamber of Commerce .....	500.00
	<hr/>
	\$ 5,213.50

I, Alex Cameron, Clerk of the City of Macon, certify that the above is an accurate copy of the official minutes of the Board Aldermen of the City of Macon as contained in Minutes of the Board dated December 26, 1939, Page 199.

(Signed) ALEX B. CAMERON  
 Alex Cameron  
 Clerk, City of Macon

(SEAL OF THE CITY OF MACON, GEORGIA 1823)

[723]

## EXHIBIT "V"

July 15, 1947—page 458

Mayor Bowden stated to Council that inasmuch as an appropriation of \$100,000.00 has been made by Council to construct a swimming pool on property under the control of the Baconsfield Park Commission, he believed that construction should be begun as soon as possible so that the pool might be completed, tested and ready for operation by the season of 1948.

He suggested that Alderman John A. Jones, Chairman of the Finance Committee of Council and Alderman Dan L. Tidwell, Chairman of the Recreation Committee of Council, together with the Baconsfield Park Commission, or a Committee of said Commission, be named in a Resolution to handle the construction of said swimming pool.

Mayor Bowden also suggested that the \$100,000.00 so appropriated be deposited in a Trust Fund for the sole and exclusive purpose of constructing a swimming pool and that Mr. C. E. Newton, Jr., Secretary and Treasurer of the Baconsfield Park Commission, be named as the Trust Officer, and/or Trustee to handle said appropriation with authority to pay amounts from said fund when approved by the Swimming Pool Committee.

There being no objection from Council, the Mayor was to prepare the Resolution.

I, Alex Cameron, Clerk of the City of Macon, certify that the above statements are accurate statements of the official minutes of the City Council of the City of Macon as contained in Minutes of the Board dated July 15, 1947, Page 458.

(Signed) ALEX B. CAMERON

Alex Cameron

Clerk, City of Macon, Georgia

## EXHIBIT "K"

GENERAL SERVICES ADMINISTRATION  
National Archives and Records Service



To all to whom these presents shall come, Greeting:

I Certify That the attached copy, or each of the specified number of attached copies, of the document(s) identified below is a true copy of a document in the legal custody of the Administrator of General Services and deposited with the National Archives of the United States.

Records of the Work Projects Administration, Record Group 69

Microfilmed Project Folders, Georgia: Selected Documents from the Project Folder Relating to Official Project 665-34-2-164 (Roll 2363W).

In testimony whereof, I, ROBERT H. BAHMER, Archivist of the United States, being duly authorized (41 CFR 101-7.104-3), have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Director, Social and Economic Records Division

of the National Archives, in the District of Columbia,  
this 21st day of July 19 67

Robert H. Bahmer  
Archivist of the United States  
By Jane F. Smith

420

Form WPA-C-145

WORKS PROGRESS ADMINISTRATION OF GEORGIA  
 125 FORTY STREET BUILDING  
 ATLANTA, GEORGIA

Date November 23, 1939AUTHORIZATION TO COMMENCE OR RESUME WORK

To: Mr. Adrian Boucanner  
 Area Engineer  
 Works Progress Administration of Georgia  
 Area No. 2  
 Macon, Ga.

This is your authority to commence ~~work~~ work on:

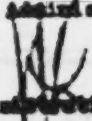
O.P. No. 000-24-2-14 A.P. No. \_\_\_\_\_  
 W.P. No. 8888 County Wilkes

under approval granted on Statement of Project Estimate Detail,

W.P.A. Form 701 (Revised, dated Nov. 23, 1939 bearing SequenceNumber 22222

Yours very truly,

(Miss) May B. Shepperson  
 Administrator

By:   
 Administrative Assistant

Division of Operations

12195

Sequence No.

NOV 25 1937

WORKS PROGRESS ADMINISTRATION

P.L. #2567

STATEMENT OF PROJECT ESTIMATE DETAIL

a new work project select for operation.

Miss Gay B. Shepperson

(Name subject structure)  
 desired that the work project described below be placed in operation  
 approval of its prosecution is requested.

A. Lechner

(Indicate local official)

Bibb - Macon

(County and city)

of project:

Construct a public community club house in the  
 City of Macon, Bibb County.

11-23-38

Estimated date of completion

5-23-39

City of Macon

Spencer's No.

G.P. Limitation, \$ 12,315.00

Included in this limitation are work projects Nos.

5530

not reproduce estimate bearing Sequence No.

Dated

ing items and amounts comprise the cost estimate hereby approved, of the above-described project or portion

Item	Mac-Macon		Distinction or Form		Total Form
	WPA	Spencer	WPA	Spencer	
LABOR	15184		8798.00		8798.00
Sup.	848		500.00		500.00
MATERIALS	12010		9298.00		9298.00
			3015.00	9006.00	12021.00
TOTAL WORKS (including Supply Fund reserve)			3015.00	9006.00	12021.00
TOTAL LABS AND WORKS (including Supply Fund reserve)			12313.00	9006.00	21319.00
and reserve and monthly limitation				X X X X X	
TOTAL WORKS (including Supply Fund reserve)			3015.00	9006.00	12021.00
TOTAL APPROVED COST ESTIMATE			12313.00	9006.00	21319.00

any identifying symbols shall appear on every pay roll, requisition, or other circumstance document chargeable

symbol:

Q-1146

Official project No.

665-24-2-124

Work project No.

5530

of expenditure symbol

665003 (9)

Title

Approved:

422

## WORKS PROGRESS ADMINISTRATION

### SPONSOR'S AGREEMENT

For Financing Non-Federal Projects  
Emergency Relief Appropriation Act of 1937

To be filled in by State office

Georgia

SAB

Application No.

Application No.

30661

OCT 24 1938

5530

Sponsor not to write above line

Proposal No. 97-8

Date

## WORKS PROGRESS ADMINISTRATION:

Certification of expenditures to be made from Federal funds on the proposal designated above, was

The City of Miami

I, do hereby agree that we will finance such part of the entire cost thereof as is not to be supplied by Federal funds.

City of Miami

Printed agent

R. W. Brown

BY F. BRANAN, ASST

Printed agent

Charles L. Brown

Signed

*R. W. Brown*  
*Chas. L. Brown*

[729]

Inter-Office Correspondence

Atlanta, Ga., 7 - 1929

Mr. Wood  
Mr. J. J. Pearson

RE: CP 665-34-2-164

NY 1572

Enclosed: 75 Mailed  
210 Mailed, R. L. Co.Please furnish the information indicated below and return to Room 900- 703  
Thank you.

Date Work Commenced

12-1-38

Date Work Stopped

active

Federal Expenditures or Requirements:

Labor

11173.28

Other

290469

Total

14022.97

Effective as of

7-13-39

Total Sponsor's Contribution

700273

Effective as of

7/13/39

1000

1750

Rev. of O.

Sequence No.

Date

DL # 2567-297

No. 3

424

WORKS PROGRESS ADMINISTRATION

STATEMENT OF PROJECT ESTIMATE DETAIL

It is desired that the work project described below be placed in operation. (For and State)  
 Your approval of its prosecution is requested.

A. Newcamer  
 (Indicate local official)

# 3 - Macon  
 (City)

Name of project: Ribb - Macon  
 (County and city)

Location symbol 24-11

construct a Public Community Club House in Macon

Starting date 11-23-38

Estimated date of completion 9-1-39

City of Macon

Spencer's No.

and G. P. limitation, \$

Included in this limitation are work projects Nos. 5580

which supersedes estimate bearing Sequence No. 14436

Dated 6-13-39

Being here and amounts comprise the cost estimate hereby approved, of the above-described project or portion

Item	MAN-POWER		MATERIALS OR FUEL		TOTAL FUND
	WPA	Spencer	WPA	Spencer	
labor	14323		11136.48		11136.48
TOTAL LABOR	24323		11136.48		11136.48
fuel					
material			2914.05	2243.01	10257.06
TOTAL MATERIAL (including Supply Fund reserve)			2914.05	2243.01	10257.06
TOTAL LABOR AND MATERIAL (including Supply Fund reserve)			14050.53	2243.01	21293.54
Fund reserve and monthly limitation					
TOTAL MATERIAL (including Supply Fund reserve)			2914.05	2243.01	10257.06
TOTAL APPROVED COST ESTIMATE			17450.58	2243.01	21293.54

Being identifying symbols shall appear on every pay roll, requisition, or other correspondence document chargeable to project:

of cost symbol 0-140

Official project No. 665-24-2-164

Work project No. 5580

series or expenditure symbol 665002(9) Title

Approved.



495

Sequence No. 11133  
 Date Jan 12 1939

WORKS PROGRESS ADMINISTRATION P.L. # 2367 - 2977

# STATEMENT OF PROJECT ESTIMATE DETAIL

A revised estimate of a work project previously operated

by G. S. Shepperson Atlanta, Georgia  
(State administrator) (City and State)

I hereby certify that the work project described below is planned in operation, and approval of its prosecution is requested.

Project Area #8 - Macon, Georgia  
(Designated local official) (City)

of project 211b - Macon Location symbol 24-11  
(Quantity and city) (County and city)

Plan of project:

Construct a Public Community Club House in the City of Macon, Bibb County.

of starting date 11-22-38 Estimated date of completion 2-2-39

of sponsor City of Macon Sponsor's No. \_\_\_\_\_

and P. Estimate, \$ 14183.00 Included in this limitation are work projects Nos. 2212

State supervisor estimate bearing Sequence No. 13972 Dated 2-17-39

being item and amounts comprising the cost estimate hereby approved, of the above-described project or portion of it:

Item	Man-Hours		Dollars and Cents		Total Price
	WPA	Spencer	WPA	Spencer	
WPA	21120		10824.00		10824.00
SP	2014		800.00		800.00
TOTAL LABOR	23134		11624.00		11624.00
Material			2012.00	2004.00	1207.00
TOTAL DOLLARS (including Supply Fund reserve)			2012.00	2004.00	1207.00
TOTAL LABOR AND DOLLARS (including Supply Fund reserve)			14124.00	2004.00	22128.00
Fund reserve and monthly limitation				X X X X X	
TOTAL DOLLARS (including Supply Fund reserve)			2012.00	2004.00	1207.00
TOTAL APPROVED COST DOLLARS			14123.00	2004.00	22128.00

Identifying symbols shall appear on every pay roll, requisition, or other documents connected with the project:

of work symbol 21120 0-140 Official project No. 2212-2412-124 Work project No. 2212

of expenditure symbol 208000(9) Title Public Community Club House

Approved: GAY S. SHEPPERSON  
*(Signature)*

JAN 12 1939

# **BEST COPY AVAILABLE**

## **PUBLISHER'S NOTICE**

**Material on the following frames is  
the best copy available to publisher.**

Division of Operations

Sequence No. 12525  
Date

426

P.L. #2367

WORKS PROGRESS ADMINISTRATION A revised estimate of a  
STATEMENT OF PROJECT ESTIMATE DETAIL project previously  
operated.

Miss Gay B. Shepperson

Atlanta, Ga.

is desired that the work project described herein be placed in operation.  
Approval of its preservation is requested

As Director

Area #8 - Macon, Ga.

of project Bibb - Macon

Location symbol 34-11

of project

Construct a public community club house in the City of Macon, Bibb County.

starting date 11-23-33

Estimated date of completion 2-23-34

of sponsor City of Macon

Sponsor's No.

and G. P. limitation, \$ 12315.00

Included in this limitation are work projects Nos. 3330

Net Decrease \$72 (\$300.00)

12708

Dated 12-29-33

estimate expenditure estimate bearing Sequence No. 12708  
The following items and amounts comprise the cost estimate hereby approved, of the above-described project or portion  
of:

Item	Man-Machine		Expenditure or Price		Total Price
	WPA	Spencer	WPA	Spencer	
Labor	12168		\$726.00		\$726.00
Supplies	942		\$00.00		\$00.00
TOTAL LABOR	12010		\$726.00		\$726.00
Materials			\$015.00	\$006.00	\$1021.00
TOTAL MATERIALS (excluding Supply Fund reserve)			\$015.00	\$006.00	\$1021.00
TOTAL LABOR AND MATERIALS (excluding Supply Fund reserve)			\$741.00	\$006.00	\$747.00
Fund reserve and monthly limitation				X X X X X	
TOTAL MATERIALS (including Supply Fund reserve)			\$015.00	\$006.00	\$1021.00
TOTAL APPROVED COST ESTIMATE			\$756.00	\$006.00	\$762.00

Identifying symbols shall appear on every pay roll, requisition, or other encumbrance document chargeable  
to project:

of work symbol 0-1146

Official project No. 623-24-2-144

Work project No. 3330

division or expenditure symbol 088002 (9)

Title

Approved:

DEC 17 1933

*[Signature]*  
State Administrator

Division of Operations

Sequence No.

DEC 1933

Date

WORKS PROGRESS ADMINISTRATION

P. L. No. 284

## STATEMENT OF PROJECT ESTIMATE DETAIL

A revised estimate of a work project previously operated

by Guy B. Shepperson

Atlanta, Georgia

(State when in office)

(City and State)

I desire that the work project described below be placed in operation.

Approval of its prosecution is requested.

I, Sequencer

Area No. 1, Macon, Georgia

(Unassigned local address)

(City)

Name of project Bibb - Macon

Location symbol 34-11

(County and city)

Name of project:

Construct a public community club house in the City of Macon, Bibb County.

Starting date 11-22-33

Estimated date of completion 6-22-34

City of Macon

Sponsor's No.

G. P. Limitation, \$ 12313.00

Included in this limitation are work projects Nos. 8530

This supervisor estimate bearing Sequence No. 12195

Dated 11-22-33

The items and amounts comprise the cost estimate heretofore approved, of the above-described project or portion of it.

Item	Man-Months		Department or Project		Total Price
	WPA	Reserve	WPA	Reserve	
	18148		8798.00		8798.00
	848		800.00		800.00
WPA LABOR	19016		9298.00		9298.00
			2815.00	9006.00	11821.00
WPA NONLABOR (excluding Supply Fund reserve)			2915.00	9006.00	11921.00
WPA LABOR AND NONLABOR (excluding Supply Fund reserve)			12113.00	9006.00	21119.00
Fund reserve and monthly limitation			200.00	X X X X X	200.00
WPA NONLABOR (including Supply Fund reserve)			3015.00	9006.00	12021.00
WPA APPROVED CUM ESTIMATE			12313.00	9006.00	21329.00

Identifying symbols shall appear on every pay roll, requisition, or other circumstantial document chargeable to project.

Project symbol 0-1146

Official project No. 645-34-2-164 Work project No. 8530

Name of expenditure symbol 663002 (8)

Title

Approved:

DEC 30 1933

(Date)

U. S. GOVERNMENT PRINTING OFFICE

1933

Guy B. Shepperson, State Administrator

[761]

428

Page 1 of 4 pages

# WORKS PROGRESS ADMINISTRATION PROJECT PROPOSAL

Requested, \$ 12513.35

OCT 24 1934 WPA Work Project No.

Approved, \$

Serial No. 6588 - 21662

(Sponsor not to write above line)

Proposal No. 97-3

Date of proposal 8-24-38

Served as

(WPA, EHA, WPA)

Project No.

(If WPA, give O. P. No.)

Works Progress Administration of

Mass

Area 33

Georgia

It is hereby made that the following proposal be reviewed and that a formal application be made for an allotment of funds for this project under the rules and regulations of the Works Progress Administration.

City of Mass

(Sponsoring agency)

Mass

(Official address—city, town, village)

Rich

(County)

Name of project:

Mass

(City, town, village)

Rich

(County)

Detailed location: Beaconfield Park, North Highlands District, Mass., Approximately one mile East of Court House.

Nature of project:

Summary of estimated costs:

Item of cost (1)	Federal funds (2)		Sponsor's funds (3)		Total (4)	
	Amount (dollars)	%	Amount (dollars)	%	Amount (dollars)	%
Unfilled.....	2321.60	18.94			2321.60	10.
Intermediate.....	1893.60	11.51			1893.60	8.
Relief.....	4623.00	37.59			4623.00	21.
Professional and technical.....	480.00	3.68			480.00	2.
Travel (a).....	8788.20	71.45			8788.20	41.2
Materials.....	500.00	4.06			500.00	2.3
Travel (a) plus (b).....	9298.20	75.51			9298.20	43.5
and equipment, and other costs:						
Material and supplies.....	3000.18	24.36	8084.33	89.48	11084.48	51.8
Equipment rentals.....			450.00	5.00	450.00	2.1
Other direct costs.....	18.00	.18	500.00	5.58	518.00	2.4
Travel (c) only.....	3015.18	24.48	9008.13	100.00	12023.48	54.3
TOTAL COST OF PROJECT.....	12513.35	100	9008.33	100	21521.68	100
PERCENT COST APPROPRIATED.....	57.78	%	43.24	%	100%	100

To construct a community club house building and perform all necessary electrical and apartment work.

Spencer has legal authority to operate project.

Work under this estimate includes:-

1000	
31	Cu. Yds.
64.061	Cu. Yds.
208	MM
6.772	Sq.
8.788	MM
880	MM
2000	Sq. Ft.
1823	Sq. Ft.
267	Sq.

Earthwork  
Concrete Work  
Forming  
Roofing & Insulation  
Floors & Ceiling  
Sanding & Finishing  
Marble & Polishing Floors  
Fylite Mainseating  
Lathing & Plastering  
Painting



Form 100-Continued  
April 1964

Estimated man-months of work:

(a) Certified workers paid from Federal funds, man-months 100

(b) Total workers paid from Federal funds, man-months 100

(c) Total workers paid by Sponsor, man-months 0

Total man-months, all workers 100

Estimated Federal expenditure per man-year of labor:

Total Federal cost of project (Item 4, col. 2, total) \$12 = \$ 800.40

Man-months labor (Item 5 (b)) 100

Preliminary plans and preparations will be complete

As Required

Final plans and specifications will be complete

As Required

For statistical, survey, and research projects only). Complete specifications, copies of forms, schedules, instructions, etc., are (are not)\*\* submitted herewith.

Work can be started 10 days after notice to proceed, and it is estimated that 20 working days will be required for completion.

If the sponsor, project will be supervised by Wilma Ellis Longue Architect

Information and operation or publication of results of completed project will be provided as follows:

Woman's Club

Project proposed has been approved by the following public planning or other agencies concerned:

Woman's Club and City of Moen

Sponsor will (will not)\*\* assume responsibility for results and will (will not)\*\* assume responsibility for completion in event that funds allotted to project are inadequate.

Agency on which project will be conducted is owned by

City of Moen

Sponsor has (has not)\*\* jurisdiction to conduct project on this property.

Project may be conducted on public property of State, county or local government; on Federal property, with permission of proper Federal authority; or on private property owned by the sponsor. If project is to be conducted on Federal property, there should be stated in this field the name of Department having jurisdiction over the property.

Completion of this project will (will not)\*\* depend upon the completion of other public or private work. Explanation:

(For construction projects only.) Project is (is not) on Federal Aid Highway.

Estimated Federal cost, per mile: \$ 0 (Highways and bridges) \$ 0 (Other)

Justification (A short, concise statement giving reason or necessity for the proposed project, including any comments or other statements about the nature of the work. Use additional sheet if necessary.)

At present there is no women's club or community house in Moen.

[illegible]

**COPY BOUND CLOSE IN CENTER**



DATE

### Qualitative and quantitative analysis:

direct costs, including safety measures, transportation of workers, tools and sundry equipment not included in bill 19, and 20.

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[1892]

Material	Quantity	Unit	Price	Total	Subtotal
Plaster	27	Sq. Ft.	1.00	27.00	124.00
Plaster	420	Sq. Ft.	1.00	420.00	544.00
Plaster	44	Sq. Ft.	2.00	88.00	632.00
Plaster	69.25	Sq. Ft.	12.00	831.00	1463.00
Plaster	48	Sq. Ft.	1.00	48.00	1511.00
Plaster	4	Sq. Ft.	8.00	32.00	1543.00
Plaster	64.01	Sq. Ft.	31.00	1984.00	3527.00
Plaster	8785	Sq. Ft.	60.00	527100.00	3527.00
Plaster	1037	Sq. Ft.	25.00	25925.00	3552.90
Plaster	25	Sq. Ft.	2.00	50.00	3602.90
Plaster	71	Sq. Ft.	6.00	426.00	4026.90
Plaster	Lump	Sq. Ft.	1.00	1.00	4027.90
Plaster	8000	Sq. Ft.	2.30	18400.00	22427.90
Plaster	4	Sq. Ft.	1.50	6.00	22433.90
Plaster	38	Sq. Ft.	.12	4.56	22438.46
Plaster	842	Sq. Ft.	.312	262.704	22701.164
Plaster	2628	Sq. Ft.	.15	394.2	23095.364
Plaster	240	Sq. Ft.	20.00	4800.00	27535.364
Plaster	7	Sq. Ft.	16.25	113.75	27649.114
Plaster	45	Sq. Ft.	47.25	2126.25	29775.364
Plaster	21	Sq. Ft.	1.50	31.50	29806.864
Plaster	1328	Sq. Ft.	333.70	443113.6	302500.464
Plaster	218	Sq. Ft.	13.00	2834.00	305334.464
Plaster	838	Sq. Ft.	7.76	6492.88	311827.344
Plaster	106	Sq. Ft.	293.00	31058.00	342885.344
Plaster	106	Sq. Ft.	211.50	22419.00	365304.344
Plaster	106	Sq. Ft.	217.75	23082.50	388386.844
Plaster	106	Sq. Ft.	181.00	19186.00	407572.844
Plaster	106	Sq. Ft.	1800.00	190800.00	598372.844
Plaster	106	Sq. Ft.	300.00	31800.00	630172.844
Plaster	106	Sq. Ft.	55.65	5898.90	689161.744
TOTAL				6300.15	11086.49

Cost by Name of work:

[illegible]

**CERTIFICATE:**

I hereby certify that the funds specified in this proposal, to be furnished by the sponsor (or equivalent value in kind), are available for the prosecution of this project as intended.

**L. E. Brown**  
(Type or print name)

Ref: 15-11-11

7/2/58

### PROOF CERTIFICATE:

facts contained in this proposal have been checked by the undersigned and are true to the best of his knowledge. I agree that the Works Progress Administration is under no obligation to complete the project proposed. I consent for operation (this sentence shall be deleted for Federal projects). This project will not cover work for the disposition of the sponsor are currently appropriated, or work included in the normal governmental operations; it will not result in the displacement of regular employees of this agency. This sponsoring agency is a public authority to prosecute the type of work proposed. The work proposed will be done in full compliance with the law. It is understood that Federal funds will be expended by the United States Treasury only upon payment authorized by the Works Progress Administration; and agreed that all operations will be in accordance with regulations under the Emergency Relief Appropriation Act of 1933 and orders and regulations issued thereunder. This consent is for the use or benefit of the public.

**Charles L. Bowdoin**  
(Type or print name)

*Geo. H. Borden* Mayor  
(Signature)

9-8-1931  
(1931)

### INSTRUCTIONS TO SPONSOR FOR PREPARING THE PROJECT PROPOSAL

tion of the project proposal and the furnishing of supplementary explanatory data are responsibilities of the sponsor. It is advised to confer with local and district offices of the Works Progress Administration to obtain information on occupational classifications, wage rates, working hours, and other matters of local application.

For type projects, the project proposal should be accompanied by plans or drawings and general specifications in a way as to permit intelligent review. Other supplementary data, to accompany the project, should be in the form of a report or a memorandum, giving the nature of the work and an estimate of the time and cost required for its completion.

51	6.1.	Washery Work	15.00	213.00
60.614	M	Framing Lumber	33.36	213.10
64.011	MM	Roofing	50.00	3203.06
71	Sqs.	Insulating Work	9.00	689.00
137	Sqs.	Floors and Ceiling	200.00	200.00
6.722	MM	Sanding and Finishing Floors	80.18	844.23
6.725	MM	Marble and Asphalt Tile Work	6.25	245.00
340	Sq.F.	Ytite Mainsheeting		116.78
2200	Sq.F.	Lathing and Plastering		1046.90
1222	Tls.	Millwork	.80	1088.40
144	L.F.	Caulking Windows		2718.43
593	Sqs.	Painting	.10	59.00
247		Misc. Iron and Bronze Work	8.50	864.50
Lot		Finished Hardware		269.97
Lot		Rough Hardware		217.78
Lot		Plumbing		121.60
Lump		Heating		1000.00
Lump		Electrical		2000.00
Lump		Landroaping		500.00
Lump		Contingencies		750.00
Lump		First Aid		161.00
		Supervision, Timekeeper and Bookkeeping		15.00
		Equipment Rental		1450.00
				480.00
				<hr/> 321819.68

TOTAL COST OF PROJECT

[818]

EXHIBIT "K"

Copy: Mr. Adrian Newcomer, Macon

October 11, 1938

Application, State  
Serial No. 6586  
Construct Community  
Club House, Macon,  
Georgia, Bibb County

Honorable Charles L. Bowden, Mayor  
City of Macon  
Macon, Georgia

Dear Mr. Bowden:

The proposed project covered in the above identified application, is now undergoing final review in this office, prior to a final decision as to what action will be taken.

In reviewing the information supporting the project application, it is noted that the proposed building is referred to on the plans, specifications and other data as being a woman's club building, which would indicate that the project upon completion would not necessarily be considered a community club house to be used by and for the benefit of the general public at large.

It is noted in the statement signed jointly by yourself, the City Treasurer, and officers of the Woman's Club House Commission, dated September 7, that reference is made to the project as being the Woman's Club House, and that the property on which the improvements will be made will not be disposed of to a nongovernmental body during the operation of the project. In the prospectus outlining the

purpose for which the building will be used, which prospectus is signed by the President and Treasurer of the Woman's Club House Commission, it is noted that the club house will be operated under the jurisdiction of the Woman's Club. The prospectus does not bear the signatures of the sponsoring officials.

[819] In order to establish the full purpose for which the building will be used upon its completion, and to assure that the property together with the improvements to be made thereon with the aid of WPA funds, will be maintained for the general use and benefit of the public at large, we consider it necessary to request an additional statement from the City of Macon, the project sponsor, similar to the following, making reference specifically to Project Application State Serial No. .... :

"With reference to Works Progress Administration Project Application State Serial No. 6586, this is to certify that the proposed building referred to in plans, specifications and other data submitted to support the project application, as 'The Woman's Club House' will, upon completion, be used as a community club house for the general use and benefit of the public at large, without discrimination against any individual, group of individuals, association, organization, club or other party of parties who may desire the use of the building and the property upon which the building is located.

"It is further certified that the City of Macon, as project sponsor and owner of the property upon which the building is to be constructed, does not intend to lease, sell, donate, or otherwise convey title or release jurisdiction of the property together with improvements made thereon during the useful life of the im-

provements placed thereon through the old of W.P.A. funds.

"It is further certified that the City of Macon, as project sponsor, will be responsible to see that the property together with the improvements made thereon will be maintained for the general use and benefit of the public, and will not be used for the profit or benefit of any one individual or specific group or organization; and the management of the property, together with improvements made thereon, will at all times [820] be subject to the approval of the designated city official or officials of the City of Macon, who will be responsible to see that the foregoing certification is adhered to."

We regret to inconvenience you further for additional information in connection with the proposed project and wish to assure you that we will be glad to give the proposed work immediate further consideration upon receiving a statement in triplicate, similar to the foregoing, notarized and signed by yourself and the City Treasurer, together with a certified and signed by yourself and the City Treasurer, together with a certified copy of the deed to the property upon which the building is to be located.

Yours very truly,

(Miss) Gay B. Shepperson  
Administrator

Administrative Assistant

JJL/MM

[821]

CITY OF MACON  
OFFICE OF THE MAYOR

Charles L. Bowden  
Mayor

Henry W. Pittman  
Mayor Pro-Tem

October 22, 1938

Hon. John J. Lambert  
Administrative Assistant  
Works Progress Administration of Georgia  
Ten Forsyth Street Building  
Atlanta, Georgia

Dear Mr. Lambert:

I hope that you will pardon our delay in sending to you certified copy of the deed of Senator A. O. Bacon covering Baconsfield Park property on which Baconsfield Club House is proposed to be erected. This is a public park left to the city by Senator Bacon in his Will and has been used for years by the City of Macon.

The Club House will be for the benefit and use of the public and while the name "Women's Club House" would indicate it would not be operated for the public this is the way it is operated.

The name of the project should be "Baconsfield Club House" instead of the Woman's Club House or whatever name it carried.

We are enclosing in triplicate the statement as requested by you, also copy of that part of the Will relating to this property.



If there is any further information that you will like to have please let us know.

Most sincerely,

Chas. L. Bowden  
Chas. L. Bowden  
MAYOR

CLB/r  
Encl.-4

---

[822] "With reference to Works Progress Administration Project Application State Serial No. 6586, this is to certify that the proposed building referred to in plans, specifications and other data submitted to support the project applications, as 'Baconsfield Club House' will, upon completion, be used as a community club house for the general use and benefit of the public at large, without discrimination against any individual, group of individuals, association, organization, club or other party or parties who may desire the use of the building and the property upon which the building is located.

"It is further certified that the City of Macon, as project sponsor and owner of the property upon which the building is to be constructed, does not intend to lease, sell, donate or otherwise convey title or release jurisdiction of the property together with improvements made thereon during the useful life of the improvements placed thereon through the aid of W. P. A. funds.

"It is further certified that the City of Macon, as project sponsor, will be responsible to see that the property together with the improvements made thereon will be main-

tained for the general use and benefit of the public, and will not be used for the profit or benefit of any one individual or specific group or organization; and the management of the property, together with improvements made thereon, will at all times be subject to the approval of the designated city official or officials of the City of Macon, who will be responsible to see that the foregoing certification is adhered to."

Chas. L. Bowden  
Chas. L. Bowden, Mayor  
City of Macon, Georgia

Frank Branan  
Frank Branan, Treasurer  
City of Macon, Georgia

[823] Sworn to and subscribed before me  
this 14th day of October 1938

Elizabeth Ledsinger  
Notary Public, Bibb County, Georgia

[824]

October 24, 1938

Mr. Adrian Newcomer  
Area Engineer  
WPA Area No. 3  
356 Cherry Street  
Macon, Ga.

Dear Mr. Newcomer:

We are returning to you herewith for your files copy of Project Application Form 306, copy of Sponsor's Agreement Form 308, copy of Project Proposal Form 301, duplicate copies of Preliminary Project Proposal Form G-141, copy of a statement signed by the Mayor and City Treasurer of Macon, that the City does not intend to release jurisdiction to the property upon which work is to be performed under the project, copy of a statement, dated September 7, signed by the Mayor of Macon and officials of the Woman's Club that the building will be maintained for the benefit of the general public, and prospectus of the proposed community club house, all bearing State Serial No. 65-30-9, which provides for constructing a community club house building, Macon, Bibb County.

The application is being forwarded to Washington for approval.

Yours very truly

(Miss) Gay B. Shepperson  
Administrator  
Administrative Assistant

JJL/MM

[847]

---

EXHIBIT "M"

(See Opposite)

443

GENERAL SERVICES ADMINISTRATION  
National Archives and Records Service



To all to whom these presents shall come, Greeting:

I Certify That the attached copy, or each of the specified number of attached copies, of the document(s) identified below is a true copy of a document in the legal custody of the Administrator of General Services and deposited with the National Archives of the United States.

Records of the Work Projects Administration, Record Group 69

Microfilmed Project Folders, Georgia: Selected Documents from  
the Project Folder Relating to Official Project 65-1-34-52  
(Roll 2990W).


In testimony whereof, I, ROBERT H. BAHMER, Archivist of the United States, being  
duly authorized (41 CFR 101-7.104-3), have hereunto caused  
the Seal of the National Archives to be affixed and my name  
subscribed by the Director, Social and Economic  
Records Division

of the National Archives, in the District of Columbia,  
this 21st day of July 19 67

Robert H. Bahmer  
Archivist of the United States  
By Jane F. Smith

444

[850]

(See Opposite) 

445

SEE

11810

1244

John Doe 12345

## WORKS PROGRESS ADMINISTRATION

A new web site selected for view

### STATEMENT OF PROJECT ESTIMATE DETAIL

47. S. M. 1800

Atlanta, Georgia

and that the work project described herein be placed in operation  
and of its preservation is requested

Arno A. - Maxon, George

10/20/77

1948 - 1950

Location symbol 34-34

the construction of a public Community Club house in the  
Hanson, Pibb County

Log date 9-12-52

Estimated date of completion

Spencer's No.

City of Macon

p. limitation, § 2426.2C

Included in this limitation are work projects Nos.

Japanese estimate bearing Japanese No.

## Method

and amounts comprise the cost estimate hereby approved, of the above-described project or portion

	WTA	WTA	WTA	Total Project
	2045	2045.00		7086.3%
	3045	2220.00		2370.7%
	4045	2220.00		3265.0%
		2220.00	2220.00	10000.0%
		2220.00	2220.00	10000.0%
		2220.00	2220.00	3215.0%
			X X X X X	
		2220.00	2220.00	10000.0%
		2220.00	2220.00	3215.0%

Identifying symbols shall appear on every pay roll, requisition, or other procurement document chargeable

CH# Social project No. 62-1-1-52 Work project No. 0072

Expenditure symbol: 26011(02)


**A person**

8 1535

**COPY BOUND CLOSE IN CENTER**

446

[862]

(See Opposite) 

WORKS PROGRESS ADMINISTRATION  
PROJECT PROPOSAL

Memphis Proposal No. 237-3 Date 9/14/59

State of Georgia

WPA No. (a)

0-4806-52

WPA APPLICATION No. 10058  
To be used in State office

Request is hereby made that in accordance with this proposal a formal application be made for an authorization to expend Federal funds by the Works Progress Administration, under its rules and regulations, in the amount of \$2466.00.

1 Has any part of the proposed work ever been included in a project proposal previously submitted to the WPA? ☒ No ☐ Yes

Indicate previous proposal(s)

2 Has any part of the proposed work ever been included in a previously operated WPA project? ☒ Yes ☐ No Indicate previous program

Project No. 005-54-2-104 - W.P. 5630

Funds requested in this proposal to be expended for (a) Completion of work with 75 percent (b) Additional funds or other work 27 percent

3 Official sponsor: City of Macon (Official address)

Macon, Ga.

4 Project location: Macon, Georgia

County Bibb

Macon, Georgia

In ☒ New ☐ In and near ( )

Check one only for city, town, etc., location. If county-wide, etc., so indicate, and designate WPA emergency headquarters

Recreation Field Park, Macon, Georgia

5 Purpose and description of work

(a) Major program Completion of Community House

(b) Description of work (Type detail in space, for long description, type on extra sheet and attach. For other-than projects see special instructions for multi-part projects on reverse side of this page.)

"Construct a public community club house in the City of Macon, Bibb County, and perform

6 Summary of estimated project costs by amount of funds (Nearest dollar to cents. Enter percentages to nearest tenth)

(a) Labor	Year or time	Percent of Total		Percent of Total		Percent of Total		Total (d)
		Amount (dollar)	Percent	Amount (dollar)	Percent	Amount (dollar)	Percent	
1 Unskilled		946.00	38.4	946.00	38.4	946.00	38.4	946.00
2 Intermediate		429.00	17.4	429.00	17.4	429.00	17.4	429.00
3 Skilled		1082.00	44.1	1082.00	44.1	1082.00	44.1	1082.00
4 Professional and technical								
Subtotal (a)		2057.00	83.9	2057.00	83.9	2057.00	83.9	2057.00
(b) Reproduction		280.00	11.4	280.00	11.4	280.00	11.4	280.00
Subtotal (b) plus 6		2226.00	91.9	2226.00	91.9	2226.00	91.9	2226.00
(c) Equipment, material, and other nonlabor made								
1 Equipment		800.00	32.5	800.00	32.5	800.00	32.5	800.00
2 Material and supplies								
3 Other nonlabor made								
Subtotal (c) only		200.00	8.1	200.00	8.1	200.00	8.1	200.00
(d) Total Cost of Project		2466.00	100	2466.00	100	2466.00	100	2466.00
(e) Total Cost Anticipated		2466.00	100	2466.00	100	2466.00	100	2466.00


PAGE 1 OF 1 PAGES SEE REVERSE SIDE OF THIS PAGE FOR INSTRUCTIONS

Changes to be on original and 2 copies



448

[863-865]

(See Opposite) 

WPA Form 100-Continued

7. (a) Total man-months of work 40

8. (a) Total man-hours of work 6478

9. Average number of workers per month

(a) Certified as eligible for assignment to be paid from Federal funds

6 To be paid from Federal funds Male

(a) To be paid by sponsor

(d) Total (b) plus (c)

10. Percentage of all permits to be paid from Federal funds who are certified as eligible for assignment, State Pub. 100

11. (a) Federal funds required for name and salaries of all certified workers, \$ 5,352.00 (b) Item 11(a) as percentage of total Federal funds 82.3 percent

12. Federal funds (Per man month \$ 2.34; and superintendence, \$ 200.00) (b) multiplier, \$ 200.00 (c) Total, \$ 470.00

13. Project may be started 2 days after notice of approval and will require 2 months for completion

14. (P) as this item, and salaries (a) through (d), on all applications involving consideration work or other work which will affect, benefit, or improve real property. Fill in solution (f) on applications involving work which will benefit or improve personal property, such as books, records, art collections, museum pieces, etc)

Present ownership of property upon which project is to be operated in City of - decon

(Federal funds source, only if not a part of Federal and part non-Federal)

(a) If Federally owned, permission of 2000 involved (Name of Federal agency) (Name of owner) both obtained

(b) If any part of project is to operate on property owned by a public agency other than the sponsor, describe document(s) which has been or will be obtained from the public agency NONE INVOLVED (Name of government, bank, company, organization, business, or person)

(c) If any part of project is to operate on private property, describe document(s) which has been or will be obtained from private owner (Name of government, bank, company, organization, business, or person)

(d) Give effective and termination dates of all documents, if perpetual, so indicate FULL TIME

Are there any preliminary or retention clauses in such documents? NO If "Yes," duplicate copies of each of such documents should accompany application.

(e) State nature and extent of work to be performed on private property. NONE

Does each such constitute improvement to private property? NO If "Yes," submit justification.

(f) State nature and ownership of personal property to be benefited or improved: (If privately owned, submit justification) NONE

15. Cost of project site: (For all construction projects and other projects which will affect, benefit, or improve real property)

(a) If project site has been purchased since June 30, 1943, or if loans, easements or rights of way have been paid or since that date, state amount paid by the sponsor

(b) If land purchase, loans, easements, or rights-of-way have not yet been paid for, but will be obtained before project is completed, state costs to be incurred by the sponsor

Have funds for the execution of this project, or any part thereof, ever been requested from another Federal Agency? NO If "Yes,"

Designate agency and date Federal funds requested, and identifying No

submitted, \$ (If additional line of summary)


17. Will the utility of this project depend upon the completion of other public or private work? NO If "Yes," explain

18. To be contemplated that public property to be improved by this project will be leased, sold, donated or otherwise disposed of to a private individual or corporation, or a quasi public organization, during the useful life of such improvements? NO If "Yes," a complete explanation must accompany the application.

PAGE 3 OF 3 PAGES (SEE REVERSE SIDE OF THIS PAGE FOR INSTRUCTIONS)

450

[874-875]

(See Opposite) 

Page 224-4 (continued)

**SPONSOR'S CERTIFICATE AND AGREEMENT:**

SPYER'S PERSONAL No 117-8

Date **August 16**, 1983

Information contained in this proposal have been checked by the undersigned and are true to the best of his knowledge and belief. It is certified that this proposed project is for the use or benefit of the public.

It is understood that Federal funds will be expended by the United States Treasury only upon pay rolls and vouchers certified by the Works Progress Administration.

It is further understood that the project will not be placed in operation unless and until assurance is given that the work's pledge will be made available as specified in the proposal, and as required by project operations.

It is agreed that the work proposed, and all operations under the project, will be done in conformance with all requirements, rules and regulations of the Works Programs Administration issued pursuant to the act of Congress under which Federal funds for the prosecution of the project are made available, and in accordance with such conditions as are attached hereto.

It is agreed that the Works Progress Administration is under no obligation to initiate operations under this grant until it is approved, nor to complete the project if placed in operation. Further, in consideration of expenditures of Federal funds to be made on the project, it is agreed, if the proposed work is undertaken, that the sponsor will bear such part of the entire cost thereof as is not to be supplied from Federal funds.

City of Mason

APPENDIX

Special authorized agent. Class. as Excluded  
(No name - type of person)

MAJOR

City of  
Lacuna

City of  
Nacoo

Agent's authorized agent **Frank Erman**  
(to be used in place of printed)

Treasure:  
(100)

To be filled in by State Officer

State Georgia

3206

LOCAL APPLICATION No. 0

DATE RECEIVED BY

0-6586-52-  
40058


**Case Study**

Q P No

P I No

452

[889]

(See Opposite) 

# CITY OF MACON

OFFICE OF THE CITY CLERK

September 7, 1938

the undersigned sponsors of the WOMAN'S CLUB HOUSE,  
OF MACON, GEORGIA, DO AGREE THAT THE PROPERTY ON  
THE IMPROVEMENTS WILL BE MADE WILL NOT BE LEASED,  
DONATED OR OTHERWISE DISPOSED OF TO ANY PRIVATE  
INDIVIDUAL OR CORPORATION, OR TO A QUASI-PUBLIC ORGANIZATION  
IN THE OPERATION OF THE PROJECT. IT IS FURTHER AGREED  
THAT WHEN THE BUILDING IS COMPLETED, IT IS TO BE MAINTAINED  
BY THE WOMAN'S CLUB AND OPERATED FOR THE BENEFIT OF THE  
LOCAL PUBLIC.

Charles L. Bowden  
Charles L. Bowden  
Mayor, City of Macon

R. W. Evans  
R. W. Evans  
Treasurer, City of Macon

Mrs. Leonard Booth  
Mrs. Leonard Booth  
President, Woman's Club House  
Commission

Mrs. Ann Lucas  
Mrs. Ann Lucas  
Treasurer, Woman's Club House  
Commission

[917]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[TITLE OMITTED]

INTERVENORS' THIRD SUPPLEMENTAL RESPONSE TO MOTION  
FOR SUMMARY JUDGMENT FILED BY SUCCESSOR TRUSTEES  
UNDER THE WILL OF A. O. BACON—Filed August 17, 1967

Come now, REV. E. S. EVANS, LOUIS H. WYNNE, REV.  
J. L. KEY, REV. BOOKER W. CHAMBERS, WILLIAM RANDALL  
and REV. VAN J. MALONE, intervenors who file this Third  
Supplemental Response to the motion for summary judg-  
ment filed by the successor trustees under the will of A. O.  
Bacon, and show the Court the following:

—1—

That attached hereto and incorporated herein by refer-  
ence are the following exhibits:

(a) Exhibit W—Stipulation between the successor  
trustees under the will of A. O. Bacon and Rev. E. S.  
Evans, et al., intervenors.

(b) Exhibit X—Letter from Mr. Willis B. Sparks, III,  
to Mayor B. F. Merritt, Jr., of Macon, Georgia, dated  
May 22, 1964.

(c) Exhibit Y—Letter from Mayor B. F. Merritt, Jr.,  
of Macon, Georgia to Mr. Willis B. Sparks, III, dated  
May 28, 1964.

(d) Exhibit Z—Affidavit of William H. Alexander, one  
of the attorneys for Rev. E. S. Evans, et al., intervenors.

[918]

WHEREFORE, intervenors pray that this Court:

(a) Grant them the relief heretofore prayed for in  
their Response, Supplemental Response, and in their Sec-

and Supplemental Response to the Motion for Summary Judgment;

(b) Enter an order which will assure and protect their right to racially nondiscriminatory use and access to Baconsfield Park and all its facilities; and

(c) Grant them such other and further relief as to this Court may seem just and proper.

This 16th day of August, 1967.

/s/ WILLIAM H. ALEXANDER  
WILLIAM H. ALEXANDER  
859½ Hunter St., N. W.  
Atlanta, Georgia 30314

JACK GREENBERG  
JAMES M. NABRIT, III  
10 Columbus Circle  
New York, New York 10019

*Attorneys for Intervenors*



[919]

## EXHIBIT "W"

## IN THE SUPERIOR COURT OF BIBB COUNTY

[TITLE OMITTED]

## STIPULATION

The undersigned parties to the above-styled case agree and stipulate the following:

## 1.

That Mrs. Mary Lou Bacon Sparks, a surviving daughter of Senator A. O. Bacon and one of his heirs under his will, died on May 31, 1944.

## 2.

That a public school known as Alexander School No. 3 is maintained and operated by the Board of Education of Bibb County, Georgia, an independent agency created by the Georgia Legislature, and is located across the street from one extreme corner of the park area of Baconsfield. The enrollment of said school during the 1966-67 school year was approximately 410 children all of whom were white. There were no negro children in attendance during that time. The principal of the school is able to make only a rough estimate of the enrollment for the term beginning in September, 1967. She estimates there will be approximately 410 white children and 15 negro children in attendance at that time.

## 3.

That there are about 12 negro families living within approximately two or three blocks of the park area.

## 4.

Counsel for the heirs of Senator Bacon enter into this [920] stipulation at the request of counsel for the intervenors E. S. Evans, et al and are willing to stipulate the truth of the above facts but wish to make it crystal clear that they do not in any way acknowledge that the facts stipulated are relevant to any issue in the above captioned case.

/s/ WILLIS B. SPARKS, 3RD  
 WILLIS B. SPARKS, 3RD  
*Of Counsel for the Heirs of  
 Senator Bacon and the Trustees  
 Under His Will*

August 14, 1967

/s/ WILLIAM H. ALEXANDER  
 WILLIAM H. ALEXANDER  
 JACK GREENBERG  
 JAMES M. NABRET, III  
*Attorneys for Rev. E. S. Evans,  
 et al. Intervenors*

August 15, 1967

[921]

EXHIBIT "X"

LAW OFFICES

JONES, SPARKS, BENTON & CORK

PERSONS BUILDING

MACON, GA. 31201

C. Baxter Jones

Edward L. Benton

Charles M. Cork

John W. Smith

A. O. B. Sparks, Jr.

Frank C. Jones

Charles M. Cork, Jr.

Franklin L. Colston

Willis B. Sparks III

Edward Bruce Benton

Carr G. Dodson

Timothy K. Adams

Mayor B. F. Merritt

c/o Mr. Trammell F. Shi

City Attorney

Southern United Building

Macon, Georgia

A. O. B. Sparks  
Counsel

May 22, 1964

Dear Mayor Merritt:

I am writing to you as attorney for the Board of Managers of Baconsfield with respect to the lease dated December 21, 1948, between the Board of Managers and the City of Macon. This lease involves property including the Baconsfield swimming pool and the surrounding area.

About a year ago, during the administration of Mayor Ed Wilson, the Board of Managers of Baconsfield brought a suit against the City in the Superior Court of Bibb County seeking to have the City removed as Trustee of Baconsfield because it was failing to enforce the racial limitation essential to the trust purpose of A. O. Bacon. Of course, when your administration came into office, the City of Macon through the City Attorney, Mr. Trammell [922] Shi, quite properly declared in open court its constitutional inability to enforce the trust as set forth by A. O. Bacon. Having declared its legal inability to enforce the racial limitation, the City thereupon tendered its resignation as Trustee of Baconsfield.

Since the City of Macon has delared in open court its legal inability to enforce the racial limitation as required by Covenant No. 2 on page 3 of the lease dated December 21, 1948, it is the feeling of the Board of Managers that the lease should be cancelled because of this breach by the City of that covenant.

Accordingly, I am writing this letter as a five day notice within the meaning of the final paragraph of the said lease, which said paragraph reads as follows:

[923]

Page 2. Ltr. to Mr. Merritt

May 19, 1964

"In the event that it breaches any of its covenants, numbered 1 to 4, inclusive, and fails to correct such breach within five days after written notice thereof, to the Mayor of the City of Macon, then the Board shall have the right to immediately terminate this contract, assume possession and control and management of the swimming pool and the pool area, in which event all rights of The City hereunder, except such rights as it may have with regard to the net revenue earned to the date of such termination, shall cease and determine."

The Board of Managers in pointing out this breach of the lease is fully aware that the City of Macon is guilty of neither bad faith nor neglect. Rather, it is obvious that performance by the City of the second covenant of the lease has been rendered impossible by decisions of the Supreme Court of the United States interpreting the Fourteenth Amendment, such decision having been handed down since December 21, 1948.

Respectfully yours,

WILLIS B. SPARKS, III

WBSIII:mbs

[924]

## EXHIBIT "Y"

B. F. MERRITT, JR.  
MAYOR

W. K. STANLEY, JR.  
MAYOR PRO-TEM

City Hall  
CITY OF MACON

May 28, 1964

Mr. Willis B. Sparks, III  
Jones, Sparks, Benton and Cork  
Attorneys-at-Law  
Persons Building  
Macon, Georgia 31201

Dear Mr. Sparks:

This will acknowledge receipt of notice given on behalf of the Board of Managers of Baconsfield of your intention to cancel the lease on the Baconsfield Swimming Pool to the City of Macon, unless the breach of said lease is corrected within five days from the receipt of said notice.

Correction of said breach is a legal impossibility and the City of Macon has no alternative but to consider your notice as an effective termination of said lease. Acting for and on behalf of the City of Macon, this will constitute notice that the City considers the lease effectively terminated immediately and its connection with the Baconsfield Swimming Pool severed. The property thus reverts to the control of the Board of Managers of Baconsfield free and clear of any lease agreement.

Sincerely,

B. F. MERRITT, JR.  
B. F. Merritt, Jr., Mayor

BFM:b

[930]

## IN THE SUPERIOR COURT OF BIBB COUNTY

(Title Omitted)

SUPPLEMENT TO MOTION FOR SUMMARY JUDGMENT  
AS AMENDED—Filed August 21, 1967

Come now Guyton G. Abney et al as Successor Trustees under the Will of A. O. Bacon and Willis B. Sparks, Jr. et al as the "Sparks heirs" of the said Senator Bacon and tender this Supplement to the Motion for Summary Judgment of Guyton G. Abney et al as amended. The "Sparks heirs" have previously concurred in the original motion for summary judgment and do hereby concur in and adopt the "Amendment To Motion For Summary Judgment" filed on behalf of Guyton G. Abney et al as Successor Trustees on June 29, 1967, as well as joining in this Supplement.

By way of this "Supplement" the above named parties add the following evidence:

1. An affidavit of Alex Cameron, Clerk of the City of Macon, dated August 16, 1967, attached hereto as Exhibit "E"
2. An affidavit of Mrs. Kenneth Dunwoody dated August 21, 1967, attached hereto as Exhibit "F"
3. An affidavit of Wesley Holley Long, Jr. dated August 19, 1967, attached hereto as Exhibit "G"

/s/ JONES, SPARKS, BENTON & CORK  
JONES, SPARKS, BENTON & CORK  
*Attorneys for the Heirs of  
Senator Bacon and the Trustees  
under his Will*

[931]

## EXHIBIT "E"

IN THE SUPERIOR COURT OF BIBB COUNTY

(Title Omitted)

## AFFIDAVIT

The following is a list of Mayors of the City of Macon, Georgia, from 1910 to 1967 with the years of service of each Mayor listed out beside his name.

John T. Moore	1910-1913
Bridges Smith	1914-1917
G. Glen Toole	1918-1921
Luther Williams	1922-1925
Wallace Miller	1925-1927
Luther Williams	1927-1929
G. Glen Toole	1929-1933
Herbert Smart	1933-1937
Charles L. Bowden	1937-1947
Lewis B. Wilson	1947-1953
B. F. Merritt, Jr.	1953-1959
Edgar Wilson	1959-1963
B. F. Merritt, Jr.	1963-1967

I, Alex Cameron, Clerk of the City of Macon, do certify that the above list of Mayors and of the dates of their service as such is an accurate reflection of the records in that



regard contained in my office. This affidavit is being given with the understanding that it is to be placed in evidence in further legal [932] proceedings in regard to Baconsfield Park and the contents of this affidavit are matters the truth of which I could swear to in open court if it were necessary.

This 16th day of August, 1967.

/s/ ALEX CAMERON

ALEX CAMERON

Clerk, City of Macon, Georgia

(City of Macon, Georgia Seal)

[935]

## EXHIBIT "G"

IN THE SUPERIOR COURT OF BIBB COUNTY

[TITLE OMITTED]

## AFFIDAVIT

I am Wesley Holley Long, Jr. I am a resident of Macon, Georgia living at 3380 Atkins Drive in that City. I am presently employed at Anderson Chemical Company in Macon. I served as Comptroller for the City of Macon from 1962 until December, 1966. My predecessor as Comptroller of the City of Macon was a Mr. Kelly Gunnells who was killed in an automobile accident in 1962. Prior to his death in 1962 Mr. Gunnells had served as Comptroller of the City of Macon for approximately twenty years.

During the time I served as Comptroller of the City of Macon I was aware that during at least a part of that time there was an outstanding lease of the Baconsfield Swimming Pool between the Board of Managers of Baconsfield as lessor and the City of Macon as lessee. While I was not completely familiar with the terms of this lease, which I knew had been in existence for several years prior to my taking office as Comptroller, I had read the lease and did know that the lease provided that if there was any profit made by the City from gate receipts to the Pool over and above the City's expenses for maintenance and operation of the Pool that the Board of Managers of Baconsfield was to be paid a part of that profit.

[936] It is my understanding as a result of my service as Comptroller of the City and my association with em-

ployees in that office some of whom had been there for several years before 1962, that the City of Macon had suffered an overall financial loss during the time it operated the Pool and indeed had suffered a loss each year the Pool was operated by the City in the sense that expenditures for upkeep and maintenance exceeded the proceeds of the paid admission of those who came to use the Pool.

During the term of my office as Comptroller of the City of Macon I had a request from a member of the Board of Managers of Baconsfield for a financial statement relative to the Pool as to whether any profit had been realized by the City in regard to the Pool since its construction. Such a completely accurate determination could not be made without a study of various City records but I recall notifying the Board after an extensive study of such records that no profit had been realized.

It is also my understanding from my service as Comptroller of the City of Macon that the City at no time during the term of the lease to the Pool ever paid any money whatever to the Board of Managers of Baconsfield pursuant to that provision of the lease which provided for a division of any profit between the City and the Board of Managers of Baconsfield.

I am giving this affidavit in order that it may be placed in evidence in further litigation in the above captioned case in regard to Baconsfield Park. I could and would, if necessary, swear to the truth of its contents in open Court.

[937] This 19th day of August, 1967.

/s/ WESLEY HOLLEY LONG, JR.  
Wesley Holley Long, Jr.

Personally appeared before me the undersigned, an officer duly authorized to administer oaths, Wesley Holley Long, Jr. who having been placed under oath swears and affirms that the foregoing statement is true and correct in every respect. \*

This 11th day of August, 1967.

WILLIS B. SPARKS, 3RD (L. S.) (N. P. Seal)  
Notary Public  
Bibb County, Georgia

[939]

(Title Omitted)

## BIBB SUPERIOR COURT

SECOND SUPPLEMENT TO MOTION FOR  
SUMMARY JUDGMENT AS AMENDED—Filed August 28, 1967

Come now Guyton Abney et al as Successor Trustees under the will of the late A. O. Bacon and W. B. Sparks, Jr. et al as the "Sparks Heirs" of Senator Bacon, the time for filing evidence in this case having been informally extended by the Court from the time set at the hearing on June 29th so as to include the date of filing this document, and add the following evidence to their presentation:

1. An affidavit of Mrs. Mary Budd Kearnes with an attached letter from then City Comptroller Holley Long to Charles E. Newton, such affidavit being marked "Exhibit H".
2. A certified copy of the order of Bibb Superior Court in a Condemnation Case number 9865-M, such certified copy being attached hereto as "Exhibit I".
3. A certified copy of a lease between the Board of Managers of Baconsfield as lessor and Charles E. Nash as lessee appearing at Book 588 Pages 147-150 in the office of the Clerk of Bibb Superior Court, such certified copy being attached hereto as "Exhibit J".
4. A certified copy of an amendment to the lease filed as "Exhibit J", such amendment appearing at Book 588 Page 146 and said copy of said amendment being attached hereto as "Exhibit K".
5. A stipulation of Counsel in regard to "Exhibit H" to "INTERVENORS' SUPPLEMENTAL RESPONSE", such stipulation [940] attached hereto as Exhibit "L".

6. An affidavit of Ralph B. Jones identifying certain photographs as having been taken by him with an envelope attached containing the photographs so identified, such affidavit and photographs being attached hereto as Exhibit "M".

/s/ JONES, SPARKS, BENTON & CORK  
JONES, SPARKS, BENTON & CORK  
*Attorneys for the heirs of*  
*Senator Bacon and the Trustees*  
*under his Will*

[941]

## EXHIBIT "H"

(Title Omitted)

## AFFIDAVIT

I am Mrs. Mary Kearnes, an assistant trust officer of the First National Bank and Trust Company in Macon, Georgia. I am the same Mrs. Mary Kearnes who testified on deposition in this proceeding on April 24, 1967.

For several years Charles E. Newton, former Chairman of the Board of Managers of Baconsfield, served simultaneously as head of the Trust Department of the said Bank and as Chairman of the said Board of Managers during which years I worked under his direction in the Trust Department. Various records and checkbooks of the Baconsfield Board of Managers were kept at the Bank during that period because of Mr. Newton's connection with the Board and because the Trust Department performed certain bookkeeping functions for the Board. They are still kept there as of this date, the Bank having an agency agreement with the Board of Managers presently in force.

Mr. Charles E. Newton is not presently discharging any duties at the Bank having been largely confined to his home for over a year by ill health after suffering what a layman might term a "stroke".

Through my work as an assistant to Mr. Newton I have become familiar with the set of check books he kept with regard to the Baconsfield Board of Managers. I know of my personal knowledge that these records which extend back from the present day until a time before the construction of the Baconsfield swimming pool in 1947 or 1948 re-

flect all receipts of income, the sources of said income and the connection in which said payments were made.

[942] At the request of Mr. Willis B. Sparks, III of Counsel for the heirs of Senator Bacon and the trustees under his will I have just completed a thorough review of the said records and can attest that they do not reflect any payment to the Board of Managers of Baconsfield by the City of Macon at any time or in any year made pursuant to the terms of the lease of the said pool by the Board to the City dated December 21, 1948, by which the Board in a clause on page 3 of the lease was to have received fifty percent of any profit made by the City over and above the City's expenses for operation and maintenance of the said pool. On the basis of my review of these records I can testify with certainty that the City never made any such payment in any amount to the Board of Managers of Baconsfield. This, I believe, is also corroborated by the financial statements incorporated in the minutes of the Board of Managers which statements, I believe, fail to reflect any payment by the City to the Board pursuant to the pool lease.

Attached to this affidavit is the original of a letter dated September 26, 1963, to "Mr. C. E. Newton, Jr." as "Chairman, Board of Managers of Baconsfield" from Mr. Holley Long as Comptroller of the City of Macon. The letter is three pages in length including a final page consisting of a listing of revenue and expenditures in connection with the City's operation of Baconsfield Pool year by year from 1948 through 1962. The "Mr. C. E. Newton, Jr." referred to is the same person elsewhere referred to herein as Mr. Charles E. Newton.

This original letter is one kept by the Trust Department of the First National Bank in the regular course of its business.



This letter by its terms is one written in reply to letters to Mr. Long by Mr. Newton dated April 3, 1963, and July 3, 1963. I have been unable to locate the copies of these two letters written by Mr. Newton in the Bank's files.

[943] This affidavit with the accompanying letter of then Comptroller Holley Long are given in order that they may be placed in evidence in the above captioned case i.e. in further legal proceedings in connection with Baconsfield.

I do swear and affirm that the contents of this affidavit are true and correct in every respect and that I could and would, if it were necessary, swear to the truth of these contents in open Court.

This 25th day of August, 1967.

/s/ MRS. MARY KEARNES (L.S.)  
Mrs. Mary Kearnes

Personally appeared before me an officer duly authorized to administer oaths Mrs. Mary Kearnes who having been placed under oath does swear and affirm that the contents of the foregoing affidavit are true and correct in every respect.

This 25th day of August, 1967.

/s/ MARY HESTER RICHARDSON (N. P. Seal)  
Notary Public,  
Bibb County, Georgia

[944]

CITY HALL  
CITY OF MACON  
GEORGIA

ED WILSON  
MAYOR

DAN TIDWELL  
MAYOR PRO-TEM

September 26, 1963

Mr. C. E. Newton, Jr. Baconsfield File  
Chairman, Board of Managers of Baconsfield  
First National Bank & Trust Company  
Macon, Georgia

Dear Mr. Newton:

This letter is in reply to your letters of April 3, 1963 and July 3, 1963, requesting information concerning revenues and expenditures at Baconsfield Pool.

Attached you will find a table showing revenues and expenditures for each year, 1948-1962. The information shown on this table includes total revenues from all sources. The expenditures on this table indicate routine expenditures for salaries of personnel employed exclusively in the pool operation and for minor repairs and general operation of the pool.

The annual expenditures shown do not include many other items, such as capital expenditures for improvements. For instance, we had the following expenditures for improvements in the years indicated:

1948	\$4,999.57
1960	6,079.21
1962	6,360.55
	<hr/>
	\$17,439.33

There are many other expenditures which would require a more detailed analysis of city audits to develop specifically. These expenditures include such items as locker rental (the revenues shown include revenue from renting lockers to the public) and charge-outs for extensive work performed by the general labor [945] force of the city.

In my opinion, on the basis of figures already in hand and on the basis of known expenditures not specifically accounted for without a more detailed audit, the pool has shown a net loss since 1948. If you feel that you would require further detailed information, we will continue to develop items of cost other than those outlined in this letter and on the enclosed table, but I am confident that expenditures will considerably exceed revenues for the period 1948-62. Of course, I will be happy to meet with you to discuss the matter or to go over our books with your accountant, if you think this will be helpful.

Sincerely,

HOLLEY LONG  
Holley Long, Comptroller  
City of Macon

HL:mg

[946]

## BACONSFIELD POOL

	<i>Revenue</i>	<i>Expenditures</i>
1948	\$ 4,407.20	\$ 4,407.20
1949	9,304.10	8,210.54
1950	10,068.80	13,341.22
1951	9,837.52	9,904.81
1952	13,163.90	11,359.90
1953	11,201.75	11,119.35
1954	12,649.45	12,040.17
1955	10,914.95	10,733.79
1956	12,037.70	10,118.98
1957	12,276.85	11,550.69
1958	12,599.26	10,183.22
1959	14,748.09	11,001.34
1960	14,253.95	7,130.12
1961	14,551.75	8,249.23
1962	12,765.88	8,118.33
	<hr/>	<hr/>
	\$174,781.15	\$151,150.56

[947]

## EXHIBIT "I"

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[TITLE OMITTED]

## ORDER

Pursuant to the Return of Honorable T. Coleman Bloodworth, the Special Master appointed and chosen by the Court to hear evidence and make an award in the above captioned matter, in which said Return an award was made to the condemnees in the sum of \$131,000.00; and said amount having been paid into the Registry of the Court.

IT IS HEREBY CONSIDERED, ORDERED AND ADJUDGED that said award be and the same is hereby made the decree of this Court.

The Clerk of this Court is hereby directed, pending a final judgment in the case of Charles E. Newton, Jr., et al v. City of Macon, being Case No. 25864 in the Superior Court of Bibb County, Georgia, and upon which a final order in this Court was entered on the 10th day of March, 1964, to deliver said sum unto Mr. C. E. Newton, Jr., in his capacity as Chairman of the Board of Managers of Baconsfield, petitioners in said Case No. 25864; and said C. E. Newton, Jr., in said capacity, is hereby directed to invest said funds in short-term United States Government securities—all to be held subject to the further order of this Court.

[948]

So ORDERED, this 26 day of March, 1964.

O. L. LONG  
J.S.C.M.C.

FILED IN OFFICE,  
26 day of March 1964  
LILLIAN LAVINE  
*Deputy Clerk*

[949]

## EXHIBIT "J"

588/147

Recorded, Oct. 20, 1948

..... GG .....

## GEORGIA BIBB COUNTY

THIS CONTRACT, made and entered into the 17th, day of October, 1947, by and between the Board of Managers of Baconsfield, hereinafter called Lessor, the first party, and Charles E. Nash, of Bibb County, Georgia, hereinafter called Lessee, the second party,

## Witnesseth:

That Lessor, in consideration of the rental herein agreed to be paid by Lessee, and of the other covenants and agreements, as hereinafter set out, does hereby demise, lease and grant unto Lessee, upon the terms and conditions hereinafter set forth, and for the period of time designated, the following described real estate, to-wit:

## Description of Property:

All that tract of parcel of land situate and being in the East Macon District of Bibb County, Georgia, and in that tract of land known as "Baconsfield", devised to the City of Macon by A. O. Bacon in his last will and testament, which is on file and of record in the office of the Ordinary of Bibb County, Georgia, and which is more fully described as being that part of Baconsfield bounded on the southeast by Emery Highway, formerly Broad Street; on the north west by Boulevard Baconsfield, sometimes referred to as Spring Street, and sometimes as North Avenue; and on the east by a forty (40) foot street which extends [950]

For Transfer to Corp. of Mercer University

See Book 552 Page 671

....day of Sept. 1953

For transfer & cancel

see Book 552 page 673

Sept 15—1953 B. a.... D. C.

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[950] northerly from Emery Highway to Boulevard Baconsfield, all as will more fully appear by reference to a blue print copy of a map made by E. L. Gostin, C. E., on Dec. 3, 1945, hereto attached as Exhibit "A" and by reference made a part hereof. \*

Term of Lease.

This lease shall begin on the date upon which possession of said premises is delivered to Lessee and shall extend for a period of ten (10) years from that date.

Delivery of Possession

Within a reasonable time after execution of this lease, and as soon as Lessor can have the buildings now on the demised premises vacated, Lessor will deliver possession of the premises to Lessee. All buildings now on the premises shall then become the absolute property of Lessee except the Fruit Stand now occupied by Bowen. Lessee agrees that he will, as soon after delivery of possession as possible, and within a reasonable time, remove all buildings now located on the premises except the Bowen Fruit Stand which shall be removed by Lessor.

GRADING OF PREMISES:

LESSEE Covenants and agrees that immediately upon being delivered possession of said premises, he will under-



take to grade that portion thereof designated upon said blue print as "Ravine", that being all of said tract lying between the "Brow of hill", as indicated upon said plat, and the said forty (40) foot street. In grading or filling the said ravine Lessee shall construct, or cause to be constructed, a culvert, or sewer, either of concrete or other suitable material, over the branch which extends under Boulevard Baconsfield through the said ravine to Broad Street, of sufficient size to carry off all water which ordinarily drains and all flood waters which occasionally drain down said branch. The grading shall consist of filling the said ravine to the level of Boulevard [951] Baconsfield and thence grading same down to the level of Broad Street, and shall be so constructed that when the forty (40) foot street is graded and opened, the grade of the property demised shall be even with the grade of such forty (40) foot street as constructed on an invaring grade between Broad Street and Boulevard Baconsfield.

The cost of removing said buildings (except the Bowen Fruit Stand) and of such grading shall be borne by Lessee. In consideration of Lessee bearing this expense, Lessor contracts and agrees that it will credit Lessee with fifteen months rental (amounting to \$3375.00) which shall accrue as the first maturing monthly rentals under the terms of this lease.

#### **RENTAL:**

Lessee agrees to pay as rental for said demised premises the sum of Two Hundred Twenty Five and 00/100 (\$225.00) Dollars a month for each and every calendar month during the period of this lease, but beginning 90 days after delivery of possession to the Lessee, the same to be paid in advance on or before the 10th, of each month, the rentals for the month in which the term begins and the month in

which the term ends to be prorated according to the number of days in such month.

#### Use of Premises:

Said premises are to be used by Lessee for the purpose of conducting thereon, or allowing to be conducted thereon, a first class, shopping center. No manufacturing business and no garage for the repair of automobiles shall be conducted upon said premises, nor shall any spirituous or malt beverages be sold thereon, nor any skating rink or dance hall conducted thereon.

In defining the use to which these premises can be put, it is the intention of the parties to provide that no business or operations shall be carried on therein which will be offensive or obnoxious.

#### [952] IMPROVEMENTS BY LESSEE

The title and ownership of such buildings as maybe erected on the demised premises shall be as follows:

If this lease should not be renewed, as herein provided, at the end of the original term, or at the end of the first 10 year renewal term, then in either of these events all buildings erected by Lessee, his assigns or sub tenants, upon the demised premises, shall be and become a part of the land and revert to Lessor upon reversion of the land; but if this lease should be renewed for both the first and second renewal periods of 10 years each by Lessee or his assigns, then and in that event the buildings shall not become a part of the land but may be removed by lessee or his assigns at any time within a period of four months after the expiration of 30 years from this date, upon the payment by Lessee of \$2500.00 in cash for this privilege; and in the event of removal of the buildings

by Lessee, he shall be obligated to clear the premises and leave the land in good order clear of all debris within the period of four months. If the buildings are not removed within the four months period they are to become a part of the land and revert to Lessor upon reversion of the land.

#### Insurance:

Lessee contracts and agrees at his own expense to keep all improvements upon said premises fully insured against loss and damage by fire and windstorm, by taking out extended coverage insurance "in the usual form, to the approximate insurable value of such improvements, in all of which policies Lessor and Lessee are to appear as the named insureds as their interest may appear, and to cause to be furnished to Lessor certificates of all such policies. In the event of damage to or destruction of any improvements upon said premises [953] occurring during the term of this lease or during any renewal term, hereinafter provided for, then Lessee agrees to immediately repair, rebuild and replace all such damaged or destroyed improvements, with improvements of equal value. Lessor agrees that the proceeds of all such insurance policies may be so applied.

#### Release from Liability

Lessee will make all repairs of every kind to the buildings and improvements and Lessor is released and relieved from any obligation to make such repairs. Lessor is also released and relieved from any and all obligations to pay for any city services and from any liability for taxes imposed against the demised premises; and is released and relieved from any obligation to see that all city ordinances and regulations are complied with.

Lessee hereby released Lessor from any and all liability for injury to person or property however the same may

arise during the term of this contract, and covenants to indemnify Lessor against any loss or damage which it may sustain on account of any such injury or damages.

#### **BANKRUPTCY**

In the event Lessee shall be adjudicated a bankrupt, or should a receiver be appointed for Lessee, or any of his property, then Lessor shall have the option to terminate this contract immediately and to at once take possession of the demised premises with all improvements thereon, without any liability to Lessee, or to his trustee in bankruptcy, or to such receiver, for any unamortized value or cost of such improvements, and without any liability of such Lessee, or such Lessee, or such trustee or receiver for rental after the date upon which possession is so taken.

#### **WAIVER OF HOMESTEAD AND ATTORNEYS FEES**

Lessee hereby waives and renounces for himself and family [954] any and all homestead and exemption rights, which he or they may have under or by virtue of the laws of Georgia and of the United States as against any liability that may accrue under this contract.

Lessee further agrees to pay 10% attorneys fees on any part of said rental that may be collected by suit or by an attorney after the same has become due as provided by law.

#### **ASSIGNMENT AND SUBLETTING**

This contract is assignable and Lessee may sublet all or any portion of the demised premises and of any improvement which may be constructed thereon but all assignees and all statements shall hold subject to all of the terms, provisions and conditions of the contract.

After buildings and improvements to the value of at least \$50,000.00 shall have been erected on the demised

premises, Lessee may transfer and assign all his interest in this lease contract to a corporation and in that event and upon such corporation's assumption by proper corporate action, of this lease and of all and singular, the duties, obligations and liabilities herein imposed upon Lessee, Lessor will accept such corporation as its lessee and release Lessee (the lessee named herein) from all future liability under this lease, such transferee or assignee thereafter to hold under and subject to all other terms, provisions and conditions of this lease.

#### DEFAULT BY LESSEE

It is agreed that if as many as two installments of rent herein contracted to be paid by Lessee shall be in arrears at any one time, or if the Lessee shall fail to perform any of the terms covenants and conditions hereof, and such default continue after thirty days written notice to pay or perform be served upon Lessee, then Lessor, if it so elects, may enter upon said premises, and repossess and enjoy the same as though this lease had not been made and without any accountability to Lessee for any unamortized value or cost of any improvement upon sold premises.

In the event possession is taken by Lessor because of default, as herein provided, whether through legal proceedings or otherwise, such repossession [955] shall not be considered as relieving Lessee from his obligation to pay the rent up to the date upon which possession was so taken and further in such event, Lessee shall have no further right, title or interest in and to such demised premises, and this contract shall be considered as terminated.

These rights of Lessor are cumulative and are not restrictive of any other rights which Lessor has under the

law, and failure of these privileges at any particular time shall not be construed to constitute a waiver thereof.

#### REQUIREMENTS AS TO NOTICE

The mailing of a letter or other written notice addressed to Lessee at 431 Nottingham Drive Macon, Georgia, or the direct delivery of any such letter or written notice to Lessee, shall be a sufficient compliance by Lessor with any requirement as to a written notice herein provided for, such notice to be deemed as given at the time of such mailing or such personal delivery. It is provided, however, that Lessee shall have the privilege of designating an agent resident of the City of Macon to so receive a copy of any such notice, with the further privilege of changing from time to time the address to which such notice shall be mailed to Lessee and of changing from time to time the agent upon whom such copy shall be so served.

[956]

#### RENEWALS:

So long as Lessee is not in default hereunder, either as to the payment of rental, or as to compliance with any of the terms, provisions and covenants of this lease, Lessee shall have the privilege at any time prior to the expiration of the ninth year of the term of this lease, of renewing the same for an additional period of ten years, at the same rental, and upon the same terms, conditions and provisions as herein provided for; and likewise, shall have the additional privilege during the first nine years of such renewal term of so renewing this lease for an additional such ten year period. No such option to renew, however, shall extend beyond the second renewal term of ten years, so this lease cannot be extended beyond a period of thirty

years from the date upon which the same begins except by a new agreement between the parties.

#### COVENANT OF PEACEABLE POSSESSION

LESSOR covenants with Lessee that it has the right to lease the premises for the term and upon the conditions herein specified and that Lessee on paying the said Rental and upon keeping and performing the covenants herein specified by him to be kept and performed, may and shall peaceably and quietly have, hold and enjoy the said demised premises for the term hereinabove specified and for the two additional renewal terms in the event of the exercise of the options to renew as hereinbefore provided.

#### SUCCESSORS AND ASSIGNS:

This contract in its entirety shall bind the successors in office of the first party and the heirs, executors, administrators, successors and assigns of the second party.

#### APPROVAL BY ATTORNEYS FOR LESSEE

The title of Lessor and its power and authority to make this lease shall be subject to approval by attorneys for Lessee, [957] and if in the opinion of Lessee's attorney it is necessary to have any court order to perfect title or to authorize the making of the lease, such order shall be obtained by Lessor. In the event Lessor is unable to obtain such order of court as may be required by Lessee's attorney after making a reasonable effort to do so then this lease shall be void, and of no further force or effect and neither party hereto shall be under any further duty, obligation or liability to the other hereunder or in reference hereto.

In Witness Whereof, the parties hereto, Lessor (acting by and through its officers duly authorized by its resolu-

tion), have hereunto set their hands and affixed their seals,  
the day and year first above written.

BOARD OF MANAGERS OF BACONSFIELD (seal)

By: Dr. W. G. Lee

Chairman of the Board

Attest: C. E. Newton Jr.

Secretary of the Board

Lessor:

Charles E. Nash (seal)

Lessee

Signed, sealed and delivered by Lessee in  
the presence of:

Rosa B. Morgan

Celia S. Lucas (N. P. Seal)

Notary Public, Ga., State at Large.

Plat recorded in

Plat Book 20, Folio 32

(C.G.) (2-28-50)

Signed, sealed and delivered by Lessor in  
the presence of:

Rosa B. Morgan

Celia S. Lucas (N. P. Seal)

Notary Public, Ga.

Notary Public, Georgia, State at Large

My Commission expires January 20, 1950

Filed in Office: Oct. 20, 1948 at: 9 A.M.

Recorded, Oct. 21, 1948

.....GG.....



[959]

## EXHIBIT "K"

Book 588, Page 146

This Contract, made and entered into the 30th day, of March, 1948, by and between the Board of Managers of Baconsfield, hereinafter called Lessor, the first party, and Charles E. Nash, of Bibb County, Georgia, hereinafter called Lessee, the second party,

Witnesseth:

That for and in consideration of the mutual agreements of the parties, and the mutual benefits to accrue to both, the parties hereto do hereby amend and modify the Lease agreement entered into between them on October 17, 1947, in the following particulars, to-wit:

Any and all Sub-Lesseees of Chas. E. Nash, who so desire, may submit to Lessor herein a copy of his sublease and a copy of his building plans and specifications, for approval. As to any and all such Sub-Lesseees whose lease, plans and specifications have been so approved by this Lessor, the following rights and privileges shall be available;  
[960]

DEED RECORD BOOK 588 BIBB COUNTY GEORGIA

Insurance:

The interest of this Lessor in all insurance policies issued on the improvements which may be built upon said premise shall, so long as this lease is in full operation and effect, be subordinate to the interest of the Lessee herein or to any Sub-Lessee, or the assignees of either, only to the extent of such funds as may be used in the erection, improvement or rebuilding of improvements located on said premises; and on the further condition that the proceeds

of any such insurance policies shall be used by the Lessee, any Sub-Lessee, or any assignee of either, for repairing, rebuilding or replacing such improvements as may have been damaged or destroyed. Nothing herein provided shall prevent the interest of the Lessor herein from being paramount, in such insurance policies, in the event the title to said improvement has, at the time they are destroyed, or before they are re-built, become vested in the Lessor under the provisions of this lease.

#### ACCEPTANCE OF SUB-LESSEES IN EVENT OF DEFAULT BY LESSEE

In the event the lease should be terminated, as provided therein, either because of the bankruptcy of the Lessee, or because of default in the payments of rent by the Lessee or for any other reason as provided in said lease, or should the Lessee fail to exercise any right of renewal granted in said lease, the Lessor herein agrees that it will accept as its immediate Lessee and tenant, each of the Sub-Lessees who may at that time hold leases or assignments from the Lessee herein, and whose sub-lease has been approved as aforesaid, and be governed by the terms of such sub-leases as to the property covered by such sub-leases.

#### REQUIREMENTS AS TO NOTICE:

Lessor agrees that they will give to every Sub Lessee whose lease has been so approved, at his last known address, notice of any termination or failure of renewal of its lease with Mr. Charles E. Nash, and give such Sub-Lessee an opportunity to be and become an immediate tenant and Lessee of this Lessor, under the terms and provisions of such sub lease.

[1961] It is understood and agreed that, except as herein-above changed and modified, the original lease between

these parties entered into October 17, 1947, shall stand unchanged and of full force and effect.

In Witness Whereof, the parties hereto, Lessor (acting by and through its officers duly authorized by its resolution), have hereunto set their hands and affixed their seals, the day and year first above written.

Board of Managers of  
Baconsfield (Seal)

By: DR. W. G. LEE,  
Chairman of the Board

Attest: C. E. NEWTON  
Secretary of the Board

LESSOR CHAS. E. NASH  
(Seal)

Lessee

Signed, sealed and delivered by  
Lessor in the presence of:

ROSA B. MORGAN

CELIA S. LUCAS (N. P. Seal)

Notary Public, Ga., State at Large

Signed, sealed and delivered by  
Lessee in the presence of:

JOHN E. WATSON

CELIA S. LUCAS (N. P. Seal)

Notary Public, Ga., State at Large

Filed in Office: Oct. 20, 1948 at: 9 A.M.

Recorded, Oct. 29, 1948

GG

[963]

## EXHIBIT "M"

BIBB SUPERIOR COURT

CASE No. 25864

CHARLES E. NEWTON ET AL.,

v.

CITY OF MACON ET AL.

## AFFIDAVIT

I am Ralph B. Jones. I am now and have been for thirty-five years a professional photographer. For nineteen years I have been associated with Drinnon, Inc., a corporation engaged in the business of photographs and photographic engravings with a place of business at 481 Broadway in Macon, Georgia. I am presently Vice President of Drinnon, Inc. and manager in charge of photography.

During the latter part of August, 1967, I was requested by attorney Willis B. Sparks, III to take some photos of the Baconsfield swimming pool and surrounding area and of a marker which is located in the park area of Baconsfield. Such photographs were taken by me pursuant to that request and from unretouched negatives a series of prints was made at Drinnon, Inc. at its office at 481 Broadway, Macon, Georgia.

On the back of each print appears the name "Drinnon, Inc." and my own name, which language serves to identify the photographs taken as those described above.

It is my understanding that this affidavit and the photographs herein described are to be placed in evidence in further proceedings in the above captioned case.

/s/ RALPH B. JONES

[964] I could and would, if it were necessary, freely testify under oath in open court to the truth of the facts contained in this affidavit.

/s/ RALPH B. JONES  
Ralph B. Jones

Personally appeared before me an officer duly authorized to administer oaths Ralph B. Jones, who having been placed under oath does swear and affirm that the foregoing affidavit is true and correct in every respect

(Illegible) (N. P. Seal)

Notary Public

My Commission Expires Jan. 19, 1968

Bibb County, Georgia

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[965]

ATTACHMENT TO EXHIBIT "M"

(See Opposite) 

# BACONSFIELD

DEvised TO THE CITY OF MACON BY

AUGUSTUS OCTAVIUS BACON

UNITED STATES SENATOR FROM GEORGIA: 1894 — 1914  
AND CHAIRMAN OF ITS FOREIGN RELATIONS COMMITTEE AND  
THE PRESIDENT PRO TEM FROM 1912 TO DATE OF HIS DEATH

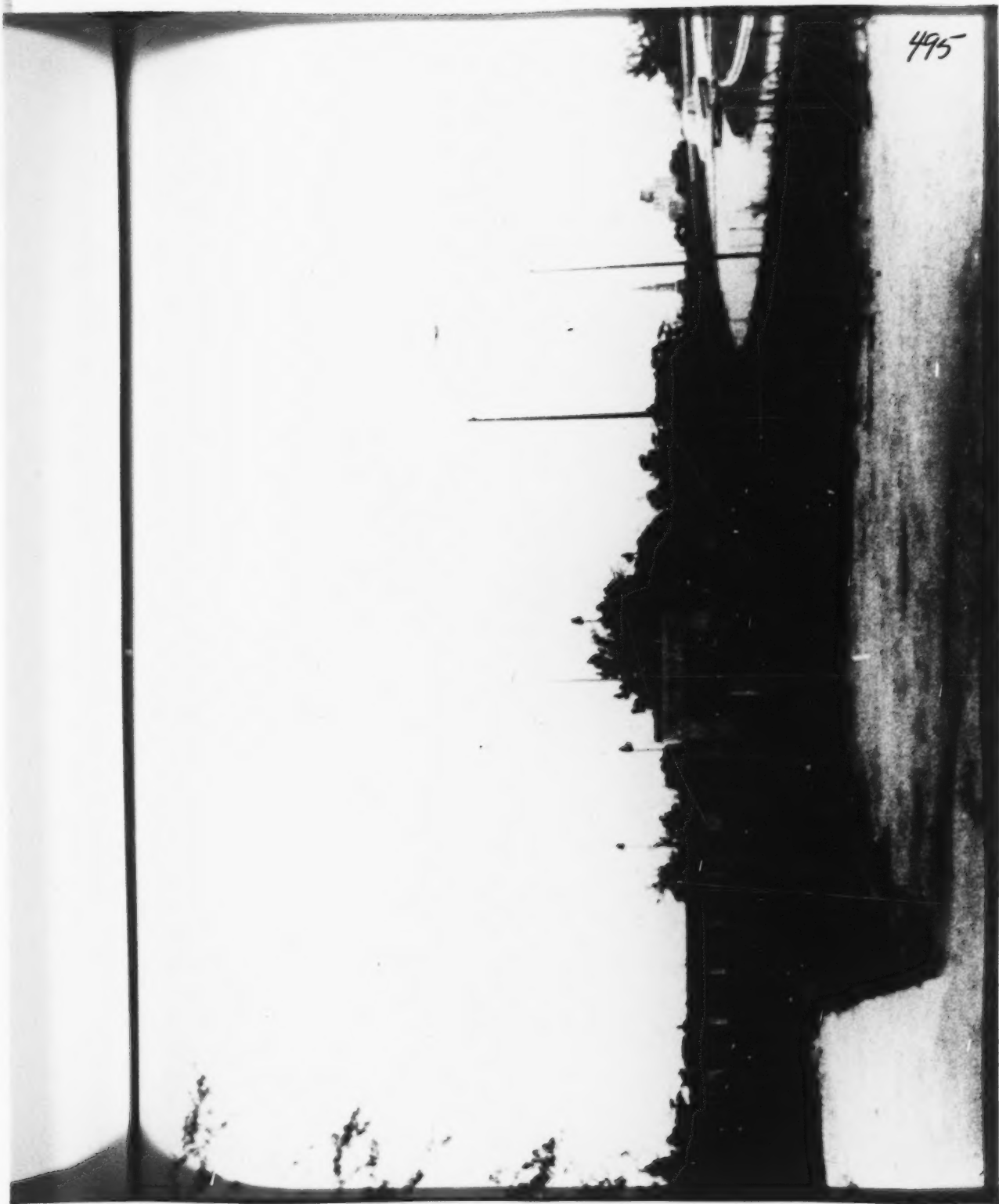
IN TRUST FOR THE SOLE, PERPETUAL AND UNENDING USE,  
BENEFIT AND ENJOYMENT OF THE WHITE WOMEN, WHITE  
GIRLS, WHITE BOYS AND WHITE CHILDREN OF THE CITY OF  
MACON, TO BE BY THEM FOREVER USED AND ENJOYED AS A  
PARK AND PLEASURE GROUND, SUBJECT TO THE RESTRIC-  
TION, GOVERNMENT MANAGEMENT, RULES AND CONTROL OF  
THE BOARD OF MANAGERS. . . . I AM MOVED TO MAKE  
THIS BEQUEST BY MY GRATITUDE TO AND LOVE OF THE  
PEOPLE OF THE CITY OF MACON. . . . AND ESPECIALLY AS  
A MEMORIAL TO MY EVER LAMENTED AND ONLY SONS, LAMAR  
BACON, WHO DIED ON THE 21ST DAY OF DECEMBER IN THE  
MORNING OF SEPTEMBER 1884, AND AUGUSTUS OCTAVIUS BACON, JR. WHO  
DIED ON THE 27TH DAY OF NOVEMBER IN THE SAME YEAR.

494

[966]

(See Opposite) 


495





496

[967]

(See Opposite) 

497



498

[968]

(See Opposite) 





[975]

THE SUPERIOR COURT FOR THE  
COUNTY OF BIBB  
STATE OF GEORGIA  
(Title Omitted)

RESPONSE BY ATTORNEY GENERAL TO  
MOTION FOR SUMMARY JUDGMENT—filed November 1, 1967

COMES NOW ARTHUR K. BOLTON in his official capacity as Attorney General of the State of Georgia and pursuant to his role as specified in Georgia Code Annotated, Section 108-212 (Ga. L. 1952, pp. 121, 122, as amended by Ga. L. 1962, p. 527) after having been made a party in the above captioned matter and files this his Response to the petition in the above matter saying:

That he is not desirous of filing any pleadings in this above captioned matter as outlined in the Order issued July 21, 1967 by Honorable O. L. Long, Judge, Superior Courts, Macon Judicial Circuit, making the Attorney General a Party to this case nor is he desirous of requesting future oral hearing or argument; however, as *parens patriae* in all legal matters pertaining to the administration and disposition of charitable trusts in the State of Georgia in which the rights of beneficiaries are involved, he respectfully files this his response on behalf of said parties saying:

That a review of the voluminous material presented him by both parties to the proceeding shows the following salient facts, to wit:

In 1911 U. S. Senator Augustus O. Bacon executed a Will devising to the mayor and council of the City of

Macon a tract of land which, at the death of his wife and daughters, [1776] was to be held "in trust for the sole, perpetual and unending use, benefit and enjoyment of the white women, white girls, white boys and white children of the City of Macon to be by them forever used and enjoyed as a park and pleasure ground." The Will specified that the park should be under the control of a Board of Managers consisting of seven (7) persons all of whom were to be white. The park was operated on a segregated basis until 1963 when Negroes were allowed to use the facilities.

In 1963 Charles E. Newton and other members of the Board of Managers of the Park brought an equitable petition against the City of Macon as trustee of the park property and Guyton G. Abney and others as trustees for the residuary beneficiaries. The petition alleged that the City was failing and refusing to enforce the provisions of the Will with respect to the exclusive use of the park and that such conduct constituted a violation of trust so as to require its removal as trustee. The prayer asked that the City be removed as trustee and another trustee be appointed in its place. The City answered that it was unable to maintain the racial bearers imposed under the Will and prayed that the court construe the Will and enter a decree setting forth the duties and obligations of the City in the premises. Rev. E. S. Evans and other Macon Negroes intervened in opposition to the removal of the City as trustee and prayed that the court effectuate the general charitable purpose of the testator to establish and endow a public park by refusing to appoint private persons as trustees. In its order, the Superior Court of Bibb County accepted the resignation of the City of Macon as trustee and appointed three (3) private citizens to serve in its stead.

Alleging that the decree of the trial was "patent enforcement of racial discrimination contrary to the equal

protection clause of the Fourteenth Amendment," the Negro intervenors appealed to the Georgia Supreme Court in *Evans v. Newton*, 220 Ga. 280. In a full bench decision affirming [977] the action below, the court held: (1) the City of Macon had a right to resign as trustee; (2) since Ga. Code § 108-302 provides that a trust shall never fail for a want of a trustee, the court had a right to appoint successor trustee; (3) under Ga. Code § 69-504 Senator Bacon had the absolute right to give and bequeath property to a limited class; (4) the *cy pres* doctrine (§ 108-202) could not be applied since it was not invoked by either of the primary parties of interest to the case. However, even if the intervenors could have raised the issue, the facts before the trial judge were wholly insufficient to invoke a ruling that the charitable bequest was or was not incapable for some reason of the exact execution and the exact manner provided by the testator.

The case went by certiorari to the U. S. Supreme Court which by a 6-3 decision reversed the Georgia Supreme Court. *Evans v. Newton*, 382 U.S. 296. The ambiguity of the majority's six (6) page opinion is amply evidenced by the eleven (11) pages of dissent which follow.

Speaking for majority, Mr. Justice Douglas stated that the court would assume for the sake of argument that no constitutional prohibition would have arisen had the property originally been left in the hands of private trustees. He went on to say:

"This park, however, is in a different posture. For years it was an integral part of the City of Macon's activities. From the pleadings, we assume it was swept, manicured, watered, controlled and maintained by the City as a public facility for whites only, as well as granted tax exemption under Ga. Code Ann.



§ 92-201. The momentum it acquired as a public facility is certainly not dissipated *ipso facto* by the appointment of 'private' trustees. So far as this record shows, there has been no change in the municipal maintenance and concern over [978] the facility. Whether these public characteristics will in time be dissipated is wholly entwined in the management or control of the park, it remains subject to the restraint of the Fourteenth Amendment. . . . We hold only that where the tradition of municipal control had become firmly established, we cannot take judicial notice that the mere substitution of trustees instantly transferred this park from the public to the private sector. . . .

"Under the circumstances of this case, we cannot but conclude that the public character of this park requires that it be treated as a public institution subject to the command of the Fourteenth Amendment, regardless of who now has title under State law. We may assume that had the Georgia courts been of the view that even in private hands the park may not be operated for the public on a segregated basis, the resignation would not have been approved and private trustees appointed. We put the matter that way because on this record we cannot say the transfer of title *per se* disentangled the park from segregation under the municipal regime that long controlled it." *Id.* at 301-02.

A special concurrence by Mr. Justice White at page 304 makes reference to the possibility of a receiver to the residuary beneficiaries:

"It must be as clear to the City as to this court that if the City remains 'entwined in the management or control of the park, it remains subject to the re-

straint of the Fourteenth Amendment,' *ante*, page 301; and should segregation in the park be barred, the residuary beneficiaries would undoubtedly press their claim that failure of the trust purpose expressed in the racial restriction results in reversion of the park property."

[979] However, in his dissent at page 314, Mr. Justice Black states that the majority's holding might well preclude the State courts from declaring that the property had reverted to the residuary beneficiaries:

"The ambiguous language used by the Court even cast doubt upon Georgia's power to hold that the trust property here can revert to the heirs of Senator Bacon if the conditions upon which he created the trust should become impossible to carry out. The heirs of Senator Bacon raised the issue of reversion below, but neither court reached it. So far as I have been able to find, the power of the State to decide such a question has been taken for granted in every prior opinion this Court has ever written touching this subject. I believe that Georgia's complete power to decide this question is so clear that no doubt should be cast on it as I think the Court's opinion does. But if this Court is to exercise jurisdiction in this case and hold, despite the fact that the State court's decree did not adjudicate any such question, that the new successor trustees cannot constitutionally operate the park in accordance with Senator Bacon's Will, then I think the Court should explicitly state that the question of reversion to his heirs is controlled by State law and remand the case to the Georgia Supreme Court to decide that question."

Upon remand, the Supreme Court of Georgia in *Evans v. Newton*, 221 Ga. 870, stated that since the City of Macon

had resigned as trustee and since the order of the trial court appointing a new trustee had been reversed, the trust property was without a trustee. The court left little doubt that in its opinion the trust property should revert to the residuary devise:

[1980] "Even if new trustees were appointed, they would be compelled to operate and maintain the park as to Whites and Negroes on a non-discriminatory basis which would be contrary to and in violation of the specific purpose of the trust property as provided in the Will of Senator Bacon.

"Under these circumstances, we are of the opinion that the sole purpose for which the trust was created has become impossible of accomplishment and has been terminated. [See Restatement (Second), Trusts § 335. 'Where a trust is expressly created . . . (and) fail(s) from any cause, a resulting trust is implied for the benefit of the grantor, or testator or his heirs.' Code § 108-107(4)]. . . .

"As we view the status of the case, in light of the United States Supreme Court decision, direction is given that the court on the return of the case determine and pass upon the contentions of the trustees of the Bacon estate and intervening heirs and such other questions as may be properly raised by the parties."

The matter is once again before the Bibb Superior Court on a motion for summary judgment filed by the successor trustees under the residuary clause of Senator Bacon's Will. They claim that the property reverted on January 17, 1966—the date the United States Supreme Court reversed the decision of the Georgia Supreme Court—and pray that the court give effect to said reversion of title.

To this motion, the Negro intervenors have thus far filed four (4) responses with twenty-six (26) exhibits attached. The exhibits tend to show that substantial sums of federal and municipal funds, including WPA money, have been expended on the park. In essence, their contentions [981] appear to be three-fold: (1) § 69-504, which allows a settlor to devise to a municipality a park in trust for the use of one race only, is unconstitutional; (2) since the racial limitation in the Will is unconstitutional, the *cy pres* doctrine (§ 108-202) should be applied so that the trustees could operate the park on a non-racial basis; (3) for the courts to declare a reversion would be in violation of *Shelley v. Kramer*, 334 U.S. 1; (4) that a "dedication" has taken place with regard to the park property and should be so declared by the Court.

On July 21, 1967 the Attorney General was made a party to the proceeding by an Order issued by Honorable O. L. Long, Judge, Superior Courts, Macon Judicial Circuit. On August 7, 1967 the Attorney General acknowledged service of the Order making him a party to the case and expressly waived further service or notice in regard to said Order and the specified materials therein.

#### DISCUSSION

Georgia Code Annotated, Section 108-212 provides as follows:

"In all cases in which the rights of beneficiaries under a charitable trust shall be involved, the Attorney General of the State of Georgia shall, in his official capacity, or the solicitor general of the circuit wherein the major portion of trust res lies, represent the interests of such persons and the interests of the State of Georgia as *parens patriae* in all legal matters

pertaining to the administration and disposition of such trusts; and, in this capacity, he may sue or be sued, and, insofar as a suit of this nature may be deemed a suit against the State, the State of Georgia expressly gives its consent to suit; the venue of such [982] suits may be in any county in the State where a substantial number of persons who are the beneficiaries of said trusts shall reside. Process shall be directed to the Attorney General of the State of Georgia, in his official capacity, or the solicitor general of the circuit wherein the major portion of trust res lies. Service may be perfected by mailing a copy of the petition and process by the clerk of the superior court wherein it is filed to the Attorney General or the solicitor general of the circuit wherein the major portion of trust res lies and by his entry of his action upon the issue docket, and it shall be the duty of said clerk to do the acts herein stated instantly upon the filing of the petition. Any judgment determining rights under any charitable trusts shall be binding on the beneficiaries when the Attorney General or the solicitor general of the circuit wherein the major portion of trust res lies is a party and is served as herein provided."

Under the above cited code provision it is incumbent upon the Attorney General's Office as *parens patriae* to contest the reversion of the property in question. First of all we feel that the transfer of Baconsfield to the City of Macon for the use and benefit of the "white women and children of Macon" did not constitute a dedication of the property. Dedication contemplates retention of the fee interest by the owner of the property. As to what constitutes a dedication see *Mayor & City of Macon v. Franklin*, 12 Ga., 239; *Parsons v. Trustees Atlanta University*, 44 Ga. 529; *Bayard v. Hargrove*, 45 Ga. 342; *Brown v. Gunn*, 75 Ga. 441;

*Davis v. East Tenn., Va. & Ga. Railway Company*, 87 Ga. 605; *Pettit v. Mayor of Macon*, 95 Ga. 645(2); *Georgia Railroad & Banking Company v. City of Atlanta*, 118 Ga. 486, 489; *Brown v. City of East Point*, 148 Ga. 85; *Dunaway v. Windsor*, 197 Ga. 705; and *State Highway Department v. Alexander et al.*, 222 Ga. 354.

[1983] In the case at bar Senator Bacon in Article IX of his Will devised, by remainder limitation,

“All right, title interest in and to said property hereinbefore described and bounded, *both legal and equitable*, including all remainders and reversions and every estate in the same of whatsoever kind . . .” (Emphasis added.)

to the mayor and council of the City of Macon. The City of Macon, in its capacity as trustee, obviously could not dedicate the property to a use inconsistent with the trust. See *Brown v. City of East Point*, *supra*. Nor do we believe that the expenditure of tax funds by the City of Macon for the upkeep of the park would constitute a dedication. See *Daniels v. The Town of Athens*, 55 Ga. 609 (1876).

The essentials of a dedication to public use are an offer, either express or implied by the owner, and an acceptance of the use of the land by the public or by the public authorities. For the dedication to be valid, there must be an intention on the part of the owner to dedicate his property to public use. See *Hyde v. Chappell*, 194 Ga. 536; *Hudspeth v. County of Early*, 210 Ga. 386, and *Nelson v. Girard*, 215 Ga. 518.

The mere use of one's property by a small portion of the public, even for an extended period of time, will not amount to a dedication of the property to a public use, unless it clearly appears that there was an intention to dedicate. Here, it is unequivocally clear that Senator Bacon

did not intend a dedication of the property in question. See *Healey v. City of Atlanta*, 125 Ga. 736, 738; *Nelson v. Girard*, *supra*; *Sams v. Seaboard Air Line Railway Company*, 218 Ga. 569 and *City of Cornelia v. Southern Railway Company*, 221 Ga. 444. If this court should find, however, that there has been a dedication of this property, we believe a reversion to the heirs of the grantor is inevitable.

[1984] "Any use which is inconsistent, or which substantially and materially interferes, with the use of the property for the particular purpose to which it was dedicated, will constitute a misuser or diversion; and while *under the general rule* a misuser or diversion of the property will not work a reversion of the property free from the easement to the owner of the dominant fee, equity will, on the petition of proper parties, enjoin such misuser or diversion." *Brown v. City of East Point*, *supra*. (Emphasis added.)

In that case the use of property as a street which had originally been dedicated as a sidewalk was held to constitute a misuser. Under this rule we feel that admission of Negroes to the park would constitute a misuser of property originally dedicated to the use of white women and children. The City would therefore be faced with the mandate of the United States Supreme Court, subsequently adopted by the Georgia courts, to the effect that the park is a public accomodation and that the City cannot relieve itself by the appointment of private, successor trustees. Under these circumstances, we feel a reversion would be inevitable.

Secondly, we are of the opinion that Senator Bacon by his Will created a charitable trust, wherefrom the fee simple interest was conveyed to a public corporation for the use and benefit of unascertained, public beneficiaries.

Being of such opinion the Attorney General then occupies a position somewhat analogous to that of a trustee and as such owes obligations both to the trust and to the beneficiaries under such trust.

As previously stated, we feel as though Ga. Code Ann. § 108-212 which provides *inter alia* as follows:

"In all cases which the rights of beneficiaries under a charitable trust shall be [985] involved, the Attorney General . . . shall . . . represent the interests of the State of Georgia as *parens patriae* in all legal matters pertaining to the administration and disposition of such trusts."

places a responsibility on the Attorney General to rely on the doctrine of *cy pres*. Under the provisions of Ga. Code Ann. § 108-202 it is provided:

"When a valid charitable bequest is incapable for some reason of execution in the exact manner, provided by the testator, donor, or founder, a court of equity will carry it into effect in such a way as will as nearly as possible effectuate his intention."

Additionally, Ga. Code Ann. § 113-815, reads as follows:

"A devise or bequest to a charitable use will be sustained and carried out in this State; and in all cases where there is a general intention manifested by the testator to effect a certain purpose, and the particular mode in which he directs it to be done shall fail from any cause, a court of chancery may, by approximation, effectuate the purpose in a manner most similar to that indicated by the testator."

In order for the *cy pres* doctrine to be invoked, there must exist at least two conditions: (1) a general chari-



table intent establishing a charitable trust, and (2) a failure of the trust because the manner for carrying it out has become impossible (§ 108-202).

Senator Bacon's Will clearly expressed his charitable intent, to wit:

"I am moved to make this bequest of said property for the use, benefit and enjoyment of the white persons herein specified by my gratitude [1986] to and love for the people of the City of Macon from whom through a long life time I have received so much personal kindness and so much of public honor. . . ."

A public park qualifies as the object of a charitable trust. See Ga. Code Ann. §§ 108-203, 69-504. The class restrictions contained in Senator Bacon's Will do not negate this charitable purpose, as discussed in 15 Am. Jur. 2d 12 (1964):

"It is well established that the public at large need have no clearly discernible interest in the enforcement of a gift in order to qualify it as charitable. A gift the specified benefits of which are confined to described classes of persons of a particular town or community . . . will qualify as charitable [citations omitted]. Size of the class which will benefit is a factor, but there is no measuring stick [citations omitted]. In a sense, it can properly be said that a gift, to qualify as charitable, must not be confined to privileged individuals and its direct benefits must be available to enough members of the community, without individually identifying them in advance, to give it at least a tinge of public interest or benefit [citations omitted]. . . ."

Senator Bacon provided that the park was to be used for all white women and children of the City of Macon, and

encompassed a large enough class, both economically and socially, of the citizens of the City of Macon to qualify as a charitable bequest for a public purpose.

The fact that it has become impossible to administer Baconsfield as Senator Bacon had intended is all too clear from recent court decisions. See *Pennsylvania v. Board of Trusts*, 353 U.S. 230, 1 L. ed. 2d 792, 77 S. Ct. 806; *Marsh v. Alabama*, 326 U.S. 230, 90, L. ed. 265, 66 S. Ct. 276; *Terry [1987] v. Adams*, 345 U.S. 461, 97 L. ed. 1152, 73 S. Ct. 809; *Pierce v. Society of Sisters*, 268 U.S. 510, 69 L. ed. 1070, 45 S. Ct. 571, 39 A.L.R. 468; *Public Utilities Commission v. Pollak*, 343 U.S. 451, 462, 96 L. ed. 1068, 1077, 72 S. Ct. 813; and *Watson v. Memphis*, 373 U.S. 526, 10 L. ed. 2d 529, 83 S. Ct. 1314.

The *cy pres* doctrine can and should be applicable to Baconsfield as it has become impossible to apply the property left by the donor in the exact way in which he directed its use.

Of course no general rule can be enumerated as to the manner in which the *cy pres* doctrine can or will be applied. Each case must necessarily depend upon its own peculiar circumstances. Under the facts of this case it appears that the City of Macon received a fee simple interest under Senator Bacon's Will rather than a determinable fee. While the purpose for which the City could use the land was limited, the Will did not specify that the City hold title only "so long as," "as long as," or "while" the racial limitations were in force, nor was there any similar term of time or duration which is normally found in a determinable fee. Also, and perhaps most important, the Will contained no statement of reverter in the event the property was not used as specifically outlined therein. As the intention of the testator controls, he *may* provide for the

revocation or termination of a charitable donation upon misuse, however, where no such provisions are made, and the charitable donation is a complete gift, the estate of the testator is completely divested of the title when the Will goes into effect. Therefore, we feel in the absence of any provision for reversion of the property in case Senator Bacon's directions are not or cannot be strictly complied with that such fact should constitute an invitation to a liberal construction of the Will by this court. The fact that the purpose of the gift cannot be carried out by reason of some legal or practical obstacle, is no basis for a claim of reverter.

[988] Experience has taught that the continual change in the course of human events quite often ultimately make impossible the manner of continuing the charitable bequest as prescribed by the testator. Here Senator Bacon has not provided how the property should be disposed of in the event his bequest could not be effectuated as prescribed, therefore we respectfully feel it is incumbent upon this court to invoke the *cy pres* doctrine and continue the charity in a manner next most consonant with the intention of the testator, *i.e.*, as a park for all the citizens of the State of Georgia.

We do additionally see no reason whatsoever why the City of Macon should not be allowed to resign as trustee of Baconsfield, particularly in view of its inability to carry out the provisions of Senator Bacon's trust. Also the Supreme Court of the United States in *Evans v. Newton*, 382 U.S. 296; 86 S. Ct. 486; 15 L. ed. 2d 373, in its majority opinion concerning reversal of *Evans v. Newton*, 220 Ga. 280, did not make any specific ruling as to right of the City of Macon to resign as trustee.

We respectfully call the Court's attention to an excellent discussion of *Evans v. Newton*, *supra*, in 2 G.S.B.J. 487-

494 (May, 1966), a copy of which is attached hereto as  
"Exhibit A."

/s/ ARTHUR K. BOLTON  
Arthur K. Bolton  
*Attorney General*

/s/ GEORGE J. HEARN, III  
George J. Hearn, III  
*Assistant Attorney General*

/s/ WILLIAM R. CHILDERS, JR.  
William R. Childers, Jr.  
*Attorney*

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[999]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[TITLE OMITTED]

(ORDER AND DECREE—Filed May 14, 1968)

The above case was heard on Motion for Summary Judgment filed November 10, 1966, in behalf of Guyton G. Abney, J. D. Crump, T. I. Denmark and Dr. W. G. Lee as Successor Trustees under Item 6th of the will of Augustus Octavius Bacon, deceased, who for convenience will be referred to as Senator Bacon. Said case was heard upon remand from the Supreme Court of Georgia for further proceedings in this Court consistent with its decision and with the decision of the Supreme Court of the United States of January 17, 1966, with specific direction to this Court to pass on contentions of the parties not passed on previously.

Said Motion and the rule nisi issued thereon were duly served upon all parties and responses thereto were filed. Various witnesses were examined by deposition and both supporting and opposition affidavits were filed. Additional parties were made and the Motion was duly assigned for hearing and was heard in open court. The parties through their respective counsel made oral arguments and within the time allowed for that purpose by the Court filed written briefs, all of which were carefully considered.

Having taken the case under consideration the Court on December 1, 1967, advised all attorneys of record by letter of its findings and conclusions. A copy of said letter of December 1, 1967, is filed with the Clerk as a part of the [1000] record in said case, and by reference is incorporated herein as findings and conclusions of the

Court. This decree is entered pursuant to and in accordance with the findings and conclusions therein and herein made.

IT IS NOW, THEREFORE, CONSIDERED, ORDERED AND DECREED BY THE COURT AS FOLLOWS:

(1) The Court has jurisdiction of the subject matter of the case and of the parties, and all necessary parties are properly before the Court. All parties have been given opportunity to be heard, and to present either supporting or opposition affidavits or responses, and all parties have been heard upon the issues involved.

(2) Rev. E. S. Evans and others as members of the Negro race were allowed to intervene in opposition to the complaint on behalf of themselves and other Negroes similarly situated as a class, and as intervenors to challenge the validity of certain of the provisions of the will of Senator Bacon and to seek relief against the petitioners. Upon appeal by them from the prior judgment of this Court the Supreme Court of the United States on January 17, 1966, ruled that Baconsfield Park could no longer be operated for the exclusive benefit of white persons as clearly provided by Senator Bacon's will, and that ruling is now the law of this case. Consistent with the further provisions of this decree no sufficient cause is shown for the grant of other or further relief to said intervenors, and the relief prayed for by them is denied.

(3) By virtue of and upon the aforesaid decision of the United States Supreme Court of January 17, 1966, the essential purpose of the trust established by Items 9th and 10th of Senator Bacon's will was voided and became impossible of performance and said trust thereupon failed and was terminated.

[1001] The Court finds and concludes, contrary to the contention of counsel for the intervenors, Reverend E. S.

Evans, et al., that the doctrine of *cy pres* is not applicable to Baconsfield. There is no general charitable purpose expressed in the will. It is clear that the testator sought to benefit a certain group of people, i.e., "the white women, white girls, white boys, and white children of Macon", and it is clear that he sought to benefit them only in a certain way, i.e., by providing them with a park or playground. Senator Bacon could not have used language more clearly indicating his intent that the benefits of Baconsfield should be extended to white persons only, or more clearly indicating that this limitation was an essential and indispensable part of his plan for Baconsfield.

The Court has considered the argument of counsel for the intervenors, Reverend E. S. Evans, et al., concerning their contention that "Baconsfield Park has been dedicated to the public and a public easement has been created which cannot be defeated merely by the termination of the trust." It is clear that there has been no dedication of Baconsfield as a park for the use of the general public. The trust was created for a limited purpose, i.e., for the sole, perpetual and unending, use, benefit and enjoyment of the white women, white girls, white boys and white children of Macon. It is therefore the Court's conclusion that the concept of dedication raised by counsel for the intervenors is without application in this case.

With reference to the contention of the intervenors in regard to the Bacon heirs being estopped, there is nothing in the record to support this contention.

[1002] It is my opinion that *Shelley vs. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948), does not support the position of the intervenors. It is further my opinion that no federal question is presented in regard to the reversion of Baconsfield, but rather this property has reverted by operation of law in accordance with well settled principles of Georgia property law.

Under the laws of the State of Georgia on January 17, 1966, the title to and right to possession of the trust assets reverted automatically by operation of law to Senator Bacon, or to his heirs or estate, and it is declared and adjudged that such title to and right to possession has so reverted.

(4) Under the decision and mandate of the Supreme Court of Georgia reversing the prior judgment of this Court the trust property was left without a trustee. In view of the failure and termination of said trust and the reversion by operation of law of the trust assets, it is not necessary that there be a trustee.

(5) The prior order of this Court accepting the resignation of the City of Macon as Trustee and appointing Successor Trustees is vacated. Nevertheless, since the City of Macon has no trust assets in its hands to be accounted for, and has reaffirmed its resignation and has again announced its refusal to serve as Trustee, and requested its discharge from the case, no further order of this Court with respect to the resignation of the City of Macon is necessary. The City of Macon having no further trust duties to perform or trust assets to be accounted for is dismissed as a party to this case.

(6) The Successor Trustees who were appointed by this Court have acted under their appointment as de facto Trustees and their acts and doings in that capacity are ratified and approved insofar as they have acted in accordance with the direction and authority given to them [1003] by virtue of their appointment. Specifically this includes the appointment by them of the Board of Managers to perform the duties and functions imposed upon the Board of Managers established under Senator Bacon's will and the acts and doings of said Board of Managers are similarly ratified and approved insofar as they have



acted in accordance with the terms of Senator Bacon's will applicable to them and under the authority and directions given to them by this Court.

(7) The Successor Trustees appointed by this Court and the Board of Managers appointed by them with the approval of this Court shall within thirty days after the date of this order file in the office of the Clerk of this Court detailed reports of their acts and doings in their respective capacities, (1) listing and identifying the trust assets, properties and funds in their hands, and (2) showing and accounting for their receipts and disbursements. Objections to said reports and accountings may be made by any party desiring to object thereto within thirty days from the date of the filing of said reports and accountings, and upon the expiration of said periods of time said reports and accountings shall be submitted to the Court for its approval or disapproval. Copies of said reports and accountings shall be served upon all attorneys of record in this case who shall be notified of the date of filing and of the time within which objections thereto may be filed. Upon approval of such reports and accountings the Successor Trustees appointed by this Court and the Board of Managers appointed by them shall be thereupon discharged and dismissed as parties to this litigation.

(8) For the purpose of receiving the reports and accountings to be made by the Successor Trustees and by the Board of Managers, as above provided, and for the further purpose of preserving and administering the assets, property and funds until this decree becomes final, Guyton [1004] G. Abney and Willis B. Sparks, Jr. are named and appointed as Receivers. Copies of said reports and accountings shall be served upon them as upon other parties, and objections thereto may be filed by them as by other parties. Upon the filing of said reports and account-

ings all cash funds and other assets of the trust shall be paid over to the Receivers and receipted for by said Receivers, to be held and administered by them under the further direction of this court.

(9) Said Receivers are authorized and empowered to hold and manage the trust properties and assets under the further orders and directions of the Court until such time as they are directed by this Court to deliver and pay them over to the person or persons entitled thereto after this decree has become final. The Receivers are authorized to recognize and continue in effect any and all contracts or other commitments with respect to the trust properties heretofore entered into or made by the Successor Trustees, or their predecessor trustee, or by the Board of Managers at any time and however constituted, whether de jure or de facto, and to enter into other contracts and commitments normally incident to the management and preservation of the trust properties which are limited in duration to not exceeding one year, all without the necessity of seeking further direction by or approval of the Court. Subject to the right of any party to this case to file objections thereto which will be heard by the Court, the Receivers may apply for and obtain authority to enter into contracts and commitments extending longer than one year.

(10) The aforesaid Successor Trustees and members of the Board of Managers shall not receive any compensation for services heretofore or hereafter rendered by them but shall be allowed all reasonable and proper costs and expenses which [1005] they have incurred, including the cost and expense of employing agents or other employees in the performance of their duties, and including costs, expenses and obligations incurred by them in the conduct of this litigation, specifically including the compensation of attorneys employed by them, or by their predecessors,

in the conduct of this litigation or in connection with the management and operation of the properties and assets of said trust. Application shall be made to this Court for the approval of the compensation to be paid to their attorneys, and appropriate order will be made for such payment either out of the funds in the hands of the Receivers or as a charge upon the properties and assets in the hands of the persons to whom said assets are distributed.

(11) The costs of this proceeding to be taxed by the Clerk including all prior costs on appeal are assessed against the properties in the hands of the Receivers and shall be paid out of these assets.

(12) Said trust having failed and terminated and the title to said assets having reverted by operation of law it is determined and decreed by the Court that said title has by operation of law vested as follows:

(a) One-half interest in Guyton G. Abney, J. D. Crump, T. I. Denmark and Dr. W. G. Lee, as Successor Trustees under Item 6th of the will of Senator Bacon for the benefit for life of Shirley Holcomb Curry, Marie Louise Lamar Curry and Manley Lamar Bacon Curry, surviving children of Augusta Lamar Bacon, deceased, and upon their deaths as provided therein.

(b) The remaining one-half thereof in equal shares in fee simple in Willis B. Sparks, Jr., Virginia Lamar Sparks, M. Garten Sparks and in The Citizens and Southern National Bank and Willis B. Sparks, Jr. as Executors of the Will of A. O. B. Sparks, deceased.

(13) This Court retains jurisdiction of this case for the purpose of acting upon the reports and accountings to be made by the Successor Trustees and successor Board of Managers, and giving direction with reference thereto, for the purpose of acting upon all applications of attorneys

and others for compensation payable to them, for the purpose of receiving and acting upon reports and applications to be made by the Receivers appointed by this Court as hereinabove provided, and fixing their compensation, for any other or further decree or order of this Court necessary or appropriate to the enforcement of this decree, and for any other purpose not inconsistent with the provisions of this decree.

This 14 day of May, 1968.

/s/ O. L. LONG

*J.S.C.M.C., Emeritus.*

FILED IN OFFICE

14 day of May 1968

LILLIAN LAVINE

Deputy Clerk

[1007]

## State of Georgia

SUPERIOR COURTS OF THE  
MACON JUDICIAL CIRCUITMacon, Georgia  
December 1, 1967

Chamber of:

Hale Bell

C. Cloud Morgan

Geo. B. Culpepper, III

Judges

Bibb, Crawford

Peach and Houston

Counties

Mr. Willis Sparks, III

Jones, Sparks, Benton &amp; Cork

Attorneys at Law

First National Bank Building

Macon, Georgia

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Mr. Trammell F. Shi

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Southern United Building

Macon, Georgia

[1008]

Honorable George J. Hearn, III  
Assistant Attorney General  
State Capitol  
Atlanta, Georgia

Re: Charles E. Newton, et al  
v. City of Macon

(Renewed Baconsfield Proceeding)

No. 25864, Bibb Superior Court

Gentlemen:

In passing upon the motion for summary judgment filed by the heirs of Senator Bacon I see no need to recite any of the pleadings, history or rulings of this Court, the Supreme Court of Georgia, or the Supreme Court of the United States, except as they may bear directly upon the issue raised by the motion.

The final order and decree of this court of March 10, 1964, was appealed to and affirmed by the Supreme Court of Georgia on September 28, 1964, and on writ of certiorari the United States Supreme Court reversed the judgment of the Supreme Court of Georgia on January 17, 1966. Thereafter on March 14, 1966, the judgment of the United States Supreme Court was made the judgment of the Supreme Court of Georgia, reversing and vacating the prior judgment of this Court. The Georgia Supreme Court remanded the case of this court for further proceedings consistent with the decision of the United States Supreme Court and specifically directed this court to pass on contentions of the parties not passed on previously.

In its decision of June 17, 1966 the United States Supreme Court ruled that Baconsfield could no longer be

operated for the exclusive benefit of white persons and ruled this was so whether the City of Macon remained as trustee or whether private trustees were appointed.

[1009] Movants contend that because of the January 17, 1966 decision of the United States Supreme Court Senator Bacon's trust became unenforceable and Baconsfield and the funds held for its support reverted at that time into Bacon's estate by operation of law. They contend further that the Supreme Court of Georgia on March 14, 1966 recognized this had occurred when the court expressed the opinion that the "sole purpose for which this trust was created has been terminated." Movants contend that this judgment of the Supreme Court of Georgia declaring what had transpired in regard to the title is now the law of the case and further that it remains only for this court at this time to give effect to said reversion of title.

Other relief sought in the motion for summary judgment is briefly stated as follows:

(1) The dismissal of the City of Macon as not now being a necessary party to this proceeding,

(2) An order allowing the Successor Trustees, Hugh M. Comer, Lawton Miller and B. L. Register to be relieved of any further duties except to account for the legal title to the trust properties, assets, etc.

(3) That the members of the Board of Managers be allowed to file an accounting of their acts and of the funds in their hands and then be released and acquitted from further liability,

(4) That one or more persons be appointed to take possession and custody of the properties, assets and funds of the charitable trust and to protect and manage the same under the further orders and directions of this Court and to transfer the title thereto and possession to the persons entitled to receive the same and

(5) That the relief prayed for by intervenors, Reverend E. S. Evans, et al, be denied.

[1010] Intervenor, Reverend E. S. Evans, et al, the only parties to object, appeared and filed objections to the motion for summary judgment and submitted evidence concerning the expenditure of tax monies of the City in the operation and maintenance of Baconsfield Park and in the building of a swimming pool located on the property. Evidence was also offered concerning the expenditure of funds by the Federal Government under the W.P.A. program in the furnishing of labor in the construction of Baconsfield clubhouse.

With reference to the evidence submitted by both the intervenors and movants there is little, if any, dispute as to the facts. The evidence is conclusive that Baconsfield park was at all times under the direct control and supervision of the Board of Managers and that funds realized from the handling of commercial properties were used in the improvement and operation of the park.

I have carefully considered the pleadings, the evidence and the brief of argument submitted by counsel for the intervenors, Reverend E. S. Evans, et al, and also the pleadings, the evidence and the brief of argument submitted by counsel for the Bacon heirs.

It is my considered opinion that when the Supreme Court of the United States rendered its decision in *Evans v. Newton*, 382 U. S. 296, 86 S. Ct. 486, 15 L.E. 2nd, 373 (1966) holding in a divided opinion that Baconsfield might not in the future be operated as a facility for the sole benefit of white persons, as specified in Senator Bacon's will, the trust failed, and the property reverted to Bacon's estate by operation of law.

It is my opinion, contrary to the contention of counsel for the intervenors, Reverend E. S. Evans, et al, that the



doctrine of *cy pres* is not applicable to Baconsfield. There is no general charitable purpose expressed in the will. It is [1011] clear that the testator sought to benefit a certain group of people, i.e., "the white women, white girls, white boys, and white children of Macon", and it is clear that he sought to benefit them only in a certain way, i.e., by providing them with a park or playground. Senator Bacon could not have used language more clearly indicating his intent that the benefits of Baconsfield should be extended to white persons only, or more clearly indicating that this limitation was an essential and indispensable part of his plan for Baconsfield.

I have considered the argument of counsel for the intervenors, Reverend E. S. Evans, et al, concerning their contention that "Baconsfield Park has been dedicated to the public and a public easement has been created which cannot be defeated merely by the termination of the trust". In my opinion it is clear that there has been no dedication of Baconsfield as a park for the use of the general public. The trust was created for a limited purpose, i.e., for the sole, perpetual and unending, use, benefit and enjoyment of the white women, white girls, white boys and white children of Macon. It is therefore my opinion that the concept of dedication raised by counsel for the intervenors is without application in this case.

With reference to the contention of the intervenors in regard to the Bacon heirs being estopped, there is nothing in the record to support this contention.

It is my opinion that *Shelley vs Kramer* does not support the position of the intervenors. It is further my opinion that no federal question is presented in regard to the reversion of Baconsfield, but rather this property has reverted by operation of law in accordance with well settled principles of Georgia property law.

[1012] Counsel for the Bacon heirs will please prepare an order in accordance with the above for the Court's consideration, furnishing a copy of the same to counsel for the other parties.

Yours very truly,

O. L. Long

O. L. LONG, J.S.C.M.C. Emeritus

Filed in Office, 14 day of May, 1968

Lillian Lavine, Deputy Clerk

[7]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

Case No. 25864

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CHARLES E. NEWTON, *et al.*

—VS—

CITY OF MACON, *et al.*

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## NOTICE OF APPEAL

Notice is hereby given that Rev. E. S. Evans, Louis H. Wynne, Rev. J. L. Key, Rev. Booker W. Chambers, William Randall and Rev. Van J. Malone, intervenors, hereby appeal to the Supreme Court of Georgia from the order entered in this case in the Bibb Superior Court on May 14, 1968.

The Clerk will please send the entire record on appeal including the transcript of evidence and proceedings which have previously been filed.

Dated: June 7, 1968

/s/ WILLIAM H. ALEXANDER

WILLIAM H. ALEXANDER

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Atlanta, Georgia 30314

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*Attorneys for Rev. E. S. Evans,  
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[1106]

## IN THE SUPREME COURT OF GEORGIA

Docket No. 24782

APPEAL FROM BIBB SUPERIOR COURT

[TITLE OMITTED]

## ENUMERATION OF ERRORS

The appellants, Rev. E. S. Evans, Louis H. Wynn, Rev. J. L. Key, Rev. Booker W. Chambers, William Randall and Rev. Van J. Malone, enumerate the following errors made by the court below:

1. The trial court erred in ruling (in the order of May 14, 1968) that the Baconsfield property has reverted to the heirs and trustees under Senator Bacon's will by operation of the law.
2. The trial court erred in ruling (in the order of May 14, 1968) that the Baconsfield property and assets vested by operation of law to Guyton G. Abney, J. D. Crump, T. I. Denmark, Dr. W. G. Lee, Willis B. Sparks, Jr., Virginia Lamar Sparks, [1107] M. Garten Sparks and The Citizens and Southern National Bank and Willis B. Sparks, Jr., as executors of the Will of A. O. B. Sparks.
3. The trial court erred in ruling (in the order of May 14, 1968) that the essential purpose of the trust established by Items 9th and 10th of Senator Bacon's will was voided and became impossible of performance and that said trust therefore failed and was terminated.
4. The trial court erred in ruling (in the order of May 14, 1968) that there is no general charitable purpose expressed in Senator Bacon's will.

5. The trial court erred in ruling (in the order of May 14, 1968) that the doctrine of *cy pres* is not applicable of Baconsfield.

6. The trial court erred in ruling (in the order of May 14, 1968) that there has been no dedication of Baconsfield as a park for the use of the general public.

7. The trial court erred in not finding (in the order of May 14, 1968) that a public easement had been created in Baconsfield Park.

8. The trial court erred in ruling (in the order of May 14, 1968) that the Bacon heirs were not estopped from seeking to have Baconsfield revert to them.

9. The trial court erred in ruling (in the order of May 14, 1968) that it is not necessary to have a trustee to handle the Baconsfield property.

10. The trial court erred (in the order of May 14, 1968) in dismissing the City of Macon as a party to this case.

11. The trial court erred (in the order of May 14, 1968) in appointing Guyton G. Abney and Willis B. Sparks, Jr. as Receivers of the Baconsfield property.

12. The trial court erred (in the order of May 14, 1968) by not following the mandate of the United States Supreme Court [1108] that Baconsfield Park is a "public institution subject to the command of the Fourteenth Amendment, regardless of who now has title under state law."

13. The trial court erred (in the order of May 14, 1968) and violated appellants' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment

to the Constitution of the United States by failing to rule that an application of the reverter doctrine or other doctrine finding a failure of the trust on the facts of this case would amount to a judicial sanction which imposed a penalty because governmental agencies managing Baconsfield Park fulfilled their Fourteenth Amendment obligation to operate the park on a racially nondiscriminatory basis.

14. The trial court erred in ruling (in the order of May 14, 1968) that the federal constitutional principles applied in *Shelley v. Kraemer*, 334 U.S. 1 (1948), which prohibit judicial action supporting racial discrimination did not support the position of the appellants.

15. The trial court erred and violated appellants' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States by ruling (in the order of May 14, 1968) that the Baconsfield Trust had failed where the state of Georgia, by enacting unconstitutional racially discriminatory park legislation, e.g., Georgia Code Ann., Sections 69-504 and 69-505 (Acts 1905, pp. 117-118), became involved in bringing about the discriminatory provision in the Baconsfield Trust.

16. The trial court erred and violated appellants' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States by applying (in the order of May 14, 1968) a variety of state law rules relating to the doctrine of *cy pres*, trust law, and the construction of Senator Bacon's will, the law pertaining to the [1109] dedication of park property and public easements and the law pertaining to equitable estoppel so as to defeat the rights of appellants

to racially nondiscriminatory use and access to Baconsfield as a public park.

17. The trial court erred and violated appellants' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States by ruling (in the order of May 14, 1968) that the trust failed and the property should revert to Senator Bacon's heirs notwithstanding that the trust assets include significant contributions of federal, state and local funds and that the governmental agencies have been significantly involved in the management and control of Baconsfield for a long period of years in order to avoid operation of Baconsfield as a racially integrated park.

18. The order and decree of the Bibb Superior Court dated May 14, 1968, containing the rulings enumerated above, erroneously denied and deprives appellants of rights, privileges, and immunities secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, by the Thirteenth Amendment to the Constitution of the United States and by Title 42, United States Code, Section 1982.

The Supreme Court rather than the Court of Appeals has jurisdiction of this case because (a) it involves the construction of the Constitution of the United States; (b) it draws into question the constitutionality of laws of the State of Georgia; (c) it involves title to land; (d) it is a case involving principles of equity; and (e) it involves the validity of, or the construction of a will.

Respectfully submitted,

/s/ William H. Alexander

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[1110]

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[Certificate of Service Omitted]



[1112]

## SUPREME COURT OF GEORGIA

Decided December 5, 1968

[TITLE OMITTED]

The trial court did not err in entering a summary judgment holding that the trust created by the will of Senator A. O. Bacon had failed and that the trust property reverted to his heirs.

ARGUED SEPTEMBER 9, 1968—DECIDED DECEMBER 5, 1968.

Equitable petition; trust. Bibb Superior Court. Before Judge Long, Emeritus.

*William H. Alexander, Jack Greenberg, James M. Nabrit, III*, for appellants.

*Jones, Cork, Miller & Benton, Charles M. Cork, Frank C. Jones, Timothy K. Adams, Trammell F. Shi, George C. Grant, Arthur K. Bolton, Attorney General*, for appellees.

[1113] MOBLEY, Justice. This appeal is from an order of Bibb Superior Court which held that a trust created by Senator A. O. Bacon in his will dated March 28, 1911, providing for a park in the City of Macon, to be called Baconsfield, for the benefit of "white women, white girls, white boys and white children of the City of Macon," had failed and the property would revert by operation of law to the heirs at law of Senator Bacon.

The litigation was commenced in May, 1963, when Charles E. Newton and others, as members of the Board of Managers of Baconsfield, brought a petition against the City of Macon, as trustee under the will of Senator Bacon, and Guyton G. Abney and others, as successor trustees under the will, holding assets for the benefit of residuary beneficiaries, asserting that the City of Macon was failing

and refusing to enforce the provisions of the will with respect to the exclusive use of Baconsfield, and praying that the city be removed as a trustee. Reverend E. S. Evans and others, Negro residents of the City of Macon, on behalf of themselves and other Negroes [1114] similarly situated, filed an intervention, contending that the restriction in the trust limiting the use of the park to white women and children was illegal, and praying that the general charitable purpose of the testator be effectuated by refusing to appoint private persons as trustees. The heirs at law of Senator Bacon also intervened, praying that, if the relief sought by the original petitioners not be granted, the property revert to the heirs. The City of Macon in its answer alleged that it could not legally enforce segregation. The city later amended its answer, alleging that it had by resolution resigned as trustee under the will, and praying that its resignation be accepted by the court. The superior court accepted this resignation by the City of Macon and appointed new trustees. On appeal by the Negro intervenors from this judgment, this court affirmed the judgment of the trial court. For a full statement of the pleadings see *Evans v. Newton*, 220 Ga. 280 (138 SE2d 573).

The Supreme Court of the United States granted writ of certiorari and reversed the judgment of this court, holding in part: "Under the circumstances of this case, we cannot but [1115] conclude that the public character of this park requires that it be treated as a public institution subject to the command of the Fourteenth Amendment, regardless of who now has title under state law. We may fairly assume that had the Georgia courts been of the view that even in private hands the park may not be operated for the public on a segregated basis, the resignation would not have been approved and private trustees appointed. We put the matter that way because on this rec-

ord we cannot say that the transfer of title per se disentangled the park from segregation under the municipal regime that long controlled it." *Evans v. Newton*, 382 U.S. 296, 302 (86 SC 486, 15 LE2d 373).

The judgment of the Supreme Court of the United States was made the judgment of this Court. The opinion of this court remanding the case to the trial court was in part as follows: "When this case was before us for review, we sustained the orders of the trial judge accepting the resignation of the City of Macon as trustee of Baconsfield and appointing new trustees. The Supreme Court of the United States, in the general reversal [1116] of the judgment of this court, did not, in the majority opinion, make any specific ruling on the right of the City of Macon to resign as trustee or that new trustees could not be appointed. The resignation of the City of Macon as trustee of Baconsfield because of its inability to carry out the provisions of the trust being an accomplished fact (and we know of no law that could compel it to act as trustee) and the order of the court appointing new trustees having been reversed, the trust property is without a trustee. Even if new trustees were appointed, they would be compelled to operate and maintain the park as to Whites and Negroes on a non-discriminatory basis which would be contrary to and in violation of the specific purpose of the trust property as provided in the will of Senator Bacon. Under these circumstances, we are of the opinion that the sole purpose for which the trust was created has become impossible of accomplishment and has been terminated. See Restatement (Second), Trusts § 335. 'Where a trust is expressly created . . . [and] fail[s] from any cause, a resulting trust is implied for the benefit of the grantor, or testator, or his heirs.' Code [1117] § 108-106(4))." *Evans v. Newton*, 221 Ga. 870 (148 SE2d 329).

On remand of the case to the Superior Court of Bibb County, a motion for summary judgment was filed by Guyton G. Abney and others, as successor trustees under the will of Senator Bacon. After consideration of depositions and affidavits, the Superior Court of Bibb County entered a summary judgment decreeing as follows: The relief prayed by Reverend E. S. Evans and other Negro intervenors is denied. Under the decision of the United States Supreme Court the essential purpose of the trust creating Baconsfield in Senator Bacon's will has become impossible of performance, and the trust has failed and is terminated. The doctrine of *cy pres* is not applicable to the trust creating Baconsfield. There is no general charitable purpose expressed in the will. It is clear that the testator sought to benefit a certain group of people, white women and children of Macon, and the language of the will clearly indicates that the limitation to this class of persons was an essential and indispensable part of the testator's plan for Baconsfield. There has been no dedication of Baconsfield as a park for the [1118] use of the general public. There is nothing in the record to support the contention that the Bacon heirs are estopped from claiming a reversion to them. The property has reverted by operation of law to these heirs. In view of the termination of the trust, it is not necessary that there be a trustee. The City of Macon having no further trust duties to perform or trust assets to account for, is dismissed as a party to the case. Certain acts and doings of the de facto successor trustees are ratified and approved. Receivers are appointed. The title to the assets of the trust property are decreed to be in the heirs at law of Senator Bacon.

The Negro intervenors appealed from this judgment, enumerating as error each of the findings of the trial court, and the failure to find that Baconsfield should be operated as a public park on a non-discriminatory basis. The inter-

venors contend that they have been denied due process of law and equal protection of the laws under the Constitution of the United States by the rulings made, and that the judgment does not follow the mandate of the Supreme Court of the United States.

[1119] 1. The intervenors urge that the doctrine of *cy pres* should be applied to Senator Bacon's will, and that the nearest effectuation of the intention of Senator Bacon would be to operate the park for the benefit of all citizens of the City of Macon. The doctrine of *cy pres* is expressed by Code § 108-202 as follows: "When a valid charitable bequest is incapable for some reason of execution in the exact manner provided by the testator, donor, or founder, a court of equity will carry it into effect in such a way as will as nearly as possible effectuate his intention."

Senator Bacon in the provision of his will creating Baconsfeld was specific in listing the persons for whose benefit the trust was created, the beneficiaries being "the white women, white girls, white boys and white children of the City of Macon." He empowered the board of managers to exercise their discretion in also admitting "white men of the City of Macon, and white persons of other communities." He left no doubt as to his wish that the park be operated on a segregated basis. After expressing his kind feelings toward persons of the [1120] Negro race, he stated his reasons for limiting the beneficiaries of the trust to white persons as follows: "I am, however, without hesitation in the opinion that in their social relations the two races should be forever separate and that they should not have pleasure or recreation grounds to be used or enjoyed, together and in common."

The doctrine of *cy pres* can not be applied to establish a trust for an entirely different purpose from that intended by the testator. *Ford v. Thomas*, 111 Ga. 493 (36 SE 841).

In the opinion of this court remanding the case to Bibb Superior Court it was held that the sole purpose for which the trust was created had become impossible of accomplishment and the trust had terminated. This was, in effect, a determination that the doctrine of *cy pres* could not be applied to Senator Bacon's will so as to authorize the operation of the park for the benefit of the public generally. The intervenors sought no review of this ruling by the Supreme Court of the United States, and it has become the law of the case. The ruling now under review that the doctrine of *cy pres* can not be [1121] applied is consistent with the opinion of this court in *Evans v. Newton*, 221 Ga. 870, *supra*.

2. It is contended by the intervenors that Baconsfield was created under the provisions of *Code* § 69-504, authorizing any person to convey, devise, give, or grant to any municipal corporation of this State, in fee simple or in trust, lands for park or pleasure grounds, limited to the use of one race only, or women and children of one race only, and that this Code section violates the equal protection clause of the Fourteenth Amendment of the United States Constitution. To hold that the trust provision of Senator Bacon's will was made pursuant to an unconstitutional Code section, would have the effect of making the trust impossible of performance (*Smith v. DuBose*, 78 Ga. 413, 434 (3 SE 309, 6 ASR 260)), and thus cause a reversion under *Code* § 108-106 (4).

3. It is contended by the intervenors that Senator Bacon's will should be construed to grant all reversionary interest in Baconsfield to the City of Macon. This assertion is based on language in the will vesting all title and interest, [1122] "including all remainders and reversions," to the City of Macon in trust for the persons specified.

Senator Bacon devised a life estate in the trust property to his wife and two daughters, and the language pointed out by the intervenors appears in the following provision of the will: "When my wife, Virginia Lamar Bacon and my two daughters, Mary Louise Bacon Sparks and Augusta Lamar Bacon Curry, shall all have departed this life, and immediately upon the death of the last survivor of them, it is my will that all right, title and interest in and to said property hereinbefore described and bounded, both legal and equitable, including all remainders and reversions and every estate in the same of whatsoever kind, shall thereupon vest in and belong to the Mayor and Council of the City of Macon, and to their successors forever, in trust etc." This language concerned remainders and reversions prior to the vesting of the legal title in the City of Macon, as trustee, and not to remainders and reversions occurring because of a failure of the trust, which Senator Bacon apparently did not contemplate, and for which he made no provision. The reversion to the heirs at law is not under [1123] the terms of his will but occurs because of the provision of our law that where an express trust fails from any cause, a resulting trust is implied for the benefit of the grantor, or testator, or his heirs. *Code* § 108-106 (4).

4. It is asserted that the City of Macon acquired all of the interest in Baconsfield of the heirs and trustees of Senator Bacon by a deed dated February 4, 1920, and that the heirs and trustees are now estopped from asserting an interest in Baconsfield. This position is not tenable. The City of Macon does not assert that it has fee simple title to Baconsfield. Senator Bacon in Item 9 of his will designated certain property of his estate to form the park to be known as Baconsfield. This property was placed in trust in the hands of named trustees, first for the benefit of his wife and two daughters, and after their death, for

recreational uses of white women and children. The testator expressly denied the trustees any right to sell the trust property. The deed of the trustees dated February 4, 1920, was made in consideration of \$1,665 annually during the life of the remaining daughter of Senator Bacon and the [1124] expenditure of \$650 annually by the city for the improvement of the park, and its purpose was to allow the city to develop the property as a recreational area prior to the death of the remaining life tenant. It did not purport to convey any reversionary interest of heirs of Senator Bacon in the event the recreational park trust should terminate.

5. It is contended that, in obedience to the mandate of the United States Supreme Court, the City of Macon should be ordered re-instated as trustee of Baconsfield and directed to operate the park on a nonsegregated basis. The opinion of the Supreme Court of the United States held that the park could not be operated for the public on a segregated basis and generally reversed the judgment of this court affirming the judgment accepting the resignation of the City of Macon as trustee and appointing new trustees. The United States Supreme Court did not decide the question of whether the trust would terminate because of the inability of the trustees to effectuate the testator's purpose in creating the trust. With the termination of the trust, there is no question as to the right of the City [1125] of Macon to resign as trustee, since there can be no trustee without a trust to administer. Neither can there be an estoppel against the acceptance of the city's resignation as a trustee, where the trust has terminated, because of the expenditure of public money in the development of the park. Compare *Bennett v. Davis*, 201 Ga. 58 (39 SE2d 3).



6. The intervenors urge that they have been denied designated constitutional rights by the judgment of the Superior Court of Bibb County holding that the trust has failed and the property has reverted to Senator Bacon's estate by operation of law. We recognize the rule announced in *Shelley v. Kraemer*, 334 U.S. 1 (68 SC 836, 92 LE 1161, 3 ALR2d 441), that it is a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution for a state court to enforce a private agreement to exclude persons of a designated race or color from the use or occupancy of real estate for residential purposes. That case has no application to the facts of the present case.

Senator Bacon by his will selected a group of people, the white women and children of the City of Macon, to be the [1126] objects of his bounty in providing them with a recreational area. The intervenors were never objects of his bounty, and they never acquired any rights in the recreational area. They have not been deprived of their right to inherit, because they were given no inheritance.

The action of the trial court in declaring that the trust has failed, and that, under the laws of Georgia, the property has reverted to Senator Bacon's heirs, is not action by a state court enforcing racially discriminatory provisions. The original action by the Board of Managers of Baconsfield seeking to have the trust executed in accordance with the purpose of the testator has been defeated. It then was incumbent on the trial court to determine what disposition should be made of the property. The court correctly held that the property reverted to the heirs at law of Senator Bacon.

*Judgment affirmed. All Justices concur.*

[1127]

## JUDGMENT

SUPREME COURT OF GEORGIA

ATLANTA, December 5, 1968

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

E. S. Evans et al. v. Guyton G. Abney, Trustee, et al.

This case came before this court upon an appeal from the Superior Court of Bibb County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

[1130]

## IN THE SUPREME COURT OF GEORGIA

[TITLE OMITTED]

## ORDER GRANTING STAY

The foregoing motion having been read and considered, the Clerk of this Court is directed to withhold the remittitur of this case until further notice. It is further ordered that all additional proceedings in this case are stayed in this Court and the trial court below for a period of ninety (90) days with the understanding that if the appellants file an appeal or petition for a writ of certiorari with the United States Supreme Court during that period that this stay shall remain in effect until the United States Supreme Court makes a final disposition of the appeal or petition for writ of certiorari.

This 13 day of December, 1968.

/s/ W. H. DUCKWORTH  
*Chief Justice, Supreme  
Court of Georgia*

Supreme Court's Order—dated May 5, 1969

SUPREME COURT OF THE UNITED STATES

No. 1106, October Term, 1968

[TITLE OMITTED]

ORDER ALLOWING CERTIORARI

May 5, 1969.

The petition for a writ of certiorari is granted and the case is placed on the summary calendar.

Mr. Justice Marshall took no part in the consideration or decision of this petition.

# Supreme Court of the United States

No. 1106 ---, October Term, 19 68

E. S. Evans, et al.,

Petitioners,

v.

Guyton G. Abney, et al.

Order allowing certiorari. Filed May 5 -----, 19 69

*The petition herein for a writ of certiorari to the Supreme Court of the State of Georgia is granted, and the case is placed on the summary calendar.*

*And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.*

**Mr. Justice Marshall took no part in the consideration or decision of this petition.**